

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

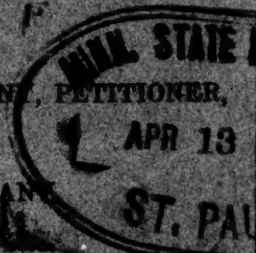
OCTOBER TERM, 1918

No. 231

CAPITOL TRANSPORTATION COMPANY, PETITIONER,

vs.

CAMBRIA STEEL COMPANY



WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SIXTH CIRCUIT.

PETITION FOR CERTIORARI FILED JULY 29, 1917.
CERTIORARI AND RETURN FILED NOVEMBER 24, 1917.

(28,087)

(26,067)

SUPREME COURT OF THE UNITED STATES.

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vs.

CAMBRIA STEEL COMPANY.

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OF APPEALS FOR THE SIXTH CIRCUIT.

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Certified Copy.

2967.

In the United States Circuit Court of Appeals, Sixth Circuit.

No. —.

In the Matter of the Petition of CAPITOL TRANSPORTATION COMPANY, as Owner of the Steamer "Benjamin Noble," for Limitation of Liability, Appellant,

vs.

CAMBRIA STEEL COMPANY, Claimant, Appellee.

Appeal from the District Court of the United States for the Eastern District of Michigan.

TRANSCRIPT OF RECORD.

Messrs. Miller, Smith, Canfield, Paddock & Perry, Penobscot Bldg., Detroit, Mich., Proctors for Appellant.

Messrs. Warren, Cady, Ladd & Hill, Union Trust Bldg., Detroit, Mich.; Messrs. Lewis, Adler & Laws, Philadelphia, Pa., Proctors for Appellee.

Filed Sep. 5, 1916. Wm. C. Cochran, Clerk.

Office Supreme Court, U. S. Filed Jul- 28, 1917. James D. Maher, Clerk.

1 In the District Court of the United States, Eastern District of Michigan, Southern Division.

In Admiralty.

In the Matter of the Libel and Petition of the CAPITAL TRANSPORTATION COMPANY OF DETROIT in a Cause of Limitation of Liability as Owners of the Steamer "Benjamin Noble."

Petition for Limitation of Liability.

(Filed July 22, 1914.)

To the said Court:

The libel and petition of the Capitol Transportation Company, of Detroit, in said district, in a cause of Limitation of Liability, Civil and Maritime, alleges and articulately propounds as follows:

1. This petitioner is a corporation duly organized under the provisions of Act No. 232 of the Public Acts of 1903, of said State, and the acts amendatory thereof and supplemental thereto, having its principal place of business and office for the transaction of business at the City of Detroit, in the district aforesaid, and was, at the times hereinafter mentioned, the owner of the American Steamship or Vessel called the Benjamin Noble, which it employed upon the Great Lakes and their connecting waters, as a private carrier for hire.

2. On or about April 15th, 1914, the said Steamship left the port of Cleveland, Ohio, for Conneaut, Ohio, where she was to load for Superior, Wisconsin; she was staunch, seaworthy and properly manned and equipped; as she proceeded down the Cuyahoga River, as this petitioner has been informed and believes, and while backing away from a bridge which had negligently failed to open, her stern came into collision with the Steamer City of Erie, and did some damage thereto, for which a claim of about six hundred dollars (\$600.) has been made against this petitioner, by the owners of the City of Erie; said collision, as your petitioner is informed and believes, was in nowise caused by any negligence or want of care on the part of the Master or crew of the Steamer Benjamin Noble, and the loss, damage and injury thereby done, occasioned and incurred, were without the privity or knowledge of this petitioner; said steamer was not itself injured by said collision and resumed her voyage, reaching Conneaut the next morning.

3. Upon the arrival of said steamer at Conneaut, she was laden with a cargo of steel rails by the Cambria Steel Company, to be transported to the port of Superior, in the State of Wisconsin, and there delivered to the Great Northern Railroad Company, or its assigns, upon payment of an agreed freight, the dangers of navigation, fire and collision excepted, pursuant to a certain charter or agreement previously entered into between the firm of Mitchell & Company, brokers at Cleveland, Ohio, and the firm of M. A. Hanna & Company, agents, made and entered into while said steamer was lying at the Port of Cleveland, aforesaid; said cargo, as petitioner is informed and believes, belonged wholly to said Cambria Steel Company and was laden upon said steamer by its servants and employees, in accordance with a well-known and long established usage of said port of Conneaut, and was a portion of a large quantity of steel rails belonging to said Cambria Steel Company, which said steamer was to take to Superior aforesaid, under the aforesaid agreement, it having been understood and agreed that she would not be able to take the entire quantity upon a single trip.

4. The said steamer left Conneaut with the said cargo on or about April 18th, 1914, in staunch and seaworthy condition, fully manned and equipped, and in all respects fit for sea and the voyage in prospect, but while on Lake Superior, in the course of her voyage, as this petitioner is informed and believes, she encountered an unusually severe storm from the northeast, with heavy and dangerous sea, the estimated velocity of the wind being about seventy miles per hour, and by reason thereof, and the perils and dangers of navi-

gation created by said storm, said steamer, with her officers and crew and the cargo aforesaid, and all she had on board except a life-raft, was totally lost and destroyed, and no part or portion of her or her freight pending has been recovered by or come into the possession of this petitioner, with the exception only of the
3 liferaft aforesaid, which is now at Detroit, in said district, and within the jurisdiction of this court.

5. The loss of said steamer and her cargo, and the loss, damage and injury occasioned thereby, as aforesaid, were incurred without the privity or knowledge of this petitioner, and, as it is informed and believes, were solely due to the severity of the storm and the dangers and perils of navigation encountered by said steamer as aforesaid, in the course of said voyage, and were not occasioned by any fault or negligence on the part of this petitioner, nevertheless two suits in admiralty have been already commenced against this petitioner by the said Cambria Steel Company, one in the District Court of the United States for the Eastern District of Pennsylvania, in Admiralty, and the other in the District Court of the United States for the Northern District of Illinois, in Admiralty, in each of which the said Cambria Steel Company seeks to recover against this petitioner the sum of \$96,418.96, as the alleged value of its cargo lost with said steamer in said disaster; the owners of said Steamer, City of Erie, are threatening to immediately commence suit against this petitioner for the damages alleged to have been sustained by them in the collision aforesaid, and other claims are also made against this petitioner on account of said voyage; the total amount of the claims asserted and in suit against this petitioner, by reason of liabilities incurred during said voyage, and losses occasioned by the foundering of said steamer, far exceeds the value of the petitioner's interest therein; and petitioner further avers that there was and is no freight earned or pending by reason of the voyage aforesaid, and that all of said vessel, her equipment, furniture and freight, which has come into its possession since said disaster, is the liferaft above mentioned, besides which there is now at Detroit, a spare wheel belonging to her equipment.

6. This petitioner desires to claim the benefit of the provisions of Sections 4283, 4284 and 4285 of the Revised Statutes of the United States and the various acts amendatory thereof and supplemental thereto, and the Rules in Admiralty of the Supreme Court in such respect provided, and also the benefit and protection of Section 18 of the Act of Congress of June 26th, 1884, and the amendments thereto, as enacted by Congress; and in this proceeding, by reason of the

4 facts hereinbefore set forth, it desires to contest its liability to any extent whatever for any and all loss, destruction, damage or injury done, occasioned or incurred by reason of the above collision and foundering of said steamer, and all other matters which may have occurred during said voyage, and to that end desires to surrender said liferaft and spare wheel, and all its right, title and interest in said steamer, as she now lies together with her freight pending, if any there be, during the pendency of this proceeding,

to a trustee to be appointed by this court, in accordance with the course and practice of this court in cases of like nature.

7. All and singular the premises are true and within the Admiralty and Maritime jurisdiction of this court.

Wherefore, this petitioner prays that this court, in accordance with the course and practice of Admiralty in like cases, will appoint a trustee to whom the said liferaft and wheel may be transferred, together with all right, title and interest of the petitioner in said steamer, and her freight pending, if any there be; that the court will also appoint a commissioner to receive proof of claims in respect of the premises, in accordance with the rules and practice of this court; that it will also issue its monition to all persons claiming damages by reason of any loss, damage or injury done occasioned or incurred by reason of said collision and foundering, as aforesaid; citing them to appear before the said commissioner at or before a time to be named in said writ, and make proof of their respective claims, and also commanding them to appear and answer all and singular the premises; that this court will issue its injunction restraining the further prosecution of the above mentioned suits of the said Cambria Steel Company against this petitioner and further restraining the commencement hereafter of any suit, action or legal proceeding of any nature or description whatsoever against this petitioner, by reason of any of the disasters hereinbefore mentioned, or other things done or liabilities incurred upon said voyage, other than in this proceeding; that the court will, upon due consideration pronounce for this petitioner and adjudge that it is not liable for any of the claims or demands above mentioned, or if such liability ever existed, that it be discharged therefrom by the surrender to the trustee as aforesaid; and that his petitioner may have such other, further or different relief in respect of the premises as may be just.

CAPITOL TRANSPORTATION CO.,

By JOHN G. DIETZ, *Secy.*

MILLER, SMITH, CANFIELD, PADDOCK & PERRY,

Proctors for Petitioner.

5 STATE AND EASTERN DISTRICT OF MICHIGAN,

County of Wayne, ss:

On this 22nd day of July, 1914, before me, the subscriber, a Notary Public in and for said county, personally appeared John G. Dietz, who being by me duly sworn did depose and say that he was the Secretary of the above named Capitol Transportation Company and authorized to subscribe the foregoing libel or petition in its behalf; that he had read the same and knew the contents thereof; that it was true, except as to those portions stated to be upon information and belief and as to such portions he believed it to be true.

JOHN G. DUNN,

Notary Public, Wayne County, Michigan.

My commission will expire December 25, 1917.

Order for Monition and Restraining Order.

(Entered July 23, 1914.)

A libel and petition having been filed herein on July 22nd, 1914, by the said Capitol Transportation Company, as owner of the said Steamship "Benjamin Noble," claiming the benefit of the limitation of liability, provided for in sections 4283, 4284 and 4285, of the Revised Statutes of the United States and the Statutes supplementary thereto and amendatory thereof, and, in particular, the benefit and protection of Section 18 of the Act of Congress of June 26, 1884, as amended, and also contesting its liability on account of the matters and things alleged in said petition, independently of the limitation of liability claimed under said laws and acts; and the said libel and petition also stating the facts and circumstances on which such limitation of liability is claimed and praying proper relief in the premises in that behalf; and the said libellant and

6 petitioner having elected to make a transfer of its interest in all that it has recovered of said vessel, namely, a liferaft and a spare wheel now in Detroit, in said district, together with all its right, title and interest in the wreck of said vessel as it now lies and its freight pending, if any there be; and an order having been — and entered herein for such transfer to Charles C. Simons, Esquire, of Detroit, in said district, as trustee, as therein provided; and it now appearing to the court that such transfer has been duly made in accordance with such order.

Now, on motion of Miller, Smith, Canfield, Paddock* and Perry, proctors for said libellant and petitioner, it is

Ordered, that a monition issue out of and under the seal of this court against all persons claiming damages for any and all loss, destruction, damage or injury caused by or resulting from the disasters set forth in the libel and petition herein, namely, the collision between the said steamer "Benjamin Noble" and the steamer "City of Erie," on or about April 15, 1914, and the subsequent foundering of the "Benjamin Noble" in Lake Superior, citing them, and each of them, to appear before this court, and make due proof of their respective claims on or before the third day of November, 1914, at ten o'clock in the forenoon; and Elmer W. Voorheis, Esquire, of Detroit, in said district, is hereby designated and appointed commissioner before whom proof of all claims which shall be presented in pursuance of such monition shall be made, subject to the right of any person interested to question or controvert the same;

And it is Further Ordered, that public notice of such monition be given by publication thereof in the Detroit Free Press, a newspaper published in the City of Detroit, said district, once a week, until the return day of said monition, the first publication to be at least three months before said return day, and that a copy of said monition and of this order be served upon the respective attorneys or proctors of all persons who at the time of making this

order shall have filed libels or begun suits or threatened so to do, for damages or loss or injury occasioned by or arising out of the disasters aforesaid, such service to be made at least thirty days before said return day;

And it is Further Ordered, that the beginning or prosecution of any and all suits, actions or legal proceedings of any nature or description whatsoever in respect of any claim arising out of or connected with the collision and the foundering and loss of the said Steamer "Benjamin Noble" be, and the same are hereby
7 stayed and restrained until the hearing and determination of this proceeding;

And it is Further Ordered that the further prosecution of the suits of the Cambria Steel Company, mentioned in said petition, be and the same is hereby stayed and restrained until the hearing and determination of this proceeding;

And it is Further Ordered that service of this order as a restraining order be made within this district in the usual manner, and in any other district, by the United States Marshal for such district, by delivery of a certified copy of this order to the person, persons, or corporations to be restrained, or their attorneys or proctors acting in their behalf.

Detroit, July 31, 1914.

ARTHUR J. TUTTLE,
United States District Judge.

MILLER, SMITH, CANFIELD, PADDOCK & PERRY,
Proctors for Petitioner.

Monition.

(Issued July 29, 1914.)

The President of the United States of America to the Marshal of the United States for the Eastern District of Michigan, Greeting:

Whereas, a libel and petition were filed in the District Court of the United States for the Eastern District of Michigan, in Admiralty, on the 22nd day of July, 1914, by the Capitol Transportation Company, a Michigan corporation, as owner of the Steamship "Benjamin Noble," praying for a limitation of its liability concerning the loss, damage or injury occasioned by the collision between said steamship and the steamship "City of Erie" on or about the 15th day of April, 1914, and the subsequent foundering of said steamer in Lake Superior on or about the 28th day of April, 1914, for the reasons and causes in said libel and petition mentioned, and
8 praying that a monition of said court in that behalf be issued, and that all persons claiming damages for any and all loss, damage or injury caused by or resulting from the disasters set forth in said libel and petition may be thereby cited to appear before the said court and make due proof of their respective claims, and all proceedings being had, that if it shall appear that the said petitioner is not liable

for any such loss, destruction, damage or injury, it may be so finally decreed by this court;

And Whereas, the said libellant and petitioner has duly transferred all its interests in all that it has recovered of said vessel, namely, a life-raft and a spare wheel, now in Detroit, in said district, together with all its right, title and interest in the wreck of said vessel as it now lies, and its freight pending, if any there be, to Charles C. Simons, Esq., of Detroit, as trustee, in accordance with the order of said court, and said court has accordingly ordered that a monition issue against all persons claiming damages for any loss, destruction, damage or injury done, occasioned, or incurred by said disasters, citing them to appear and make due proof of their respective claims;

You Are Therefore, commanded to cite all persons claiming damages for any loss, destruction, damage or injury occasioned by said collision or foundering, to appear before said court and make due proof of their respective claims before Elmer W. Voorheis, Esq., of Detroit, the commissioner designated and appointed by the court herein, at his office in the Federal Building in Detroit, in said district, on or before the 3rd day of November, 1914, at ten o'clock in the forenoon, and you are also commanded to cite such claimants to appear and answer the allegations of the libel and petition herein on or before said last named date, or within such further time as this court may grant, and to have and receive such relief as may be due.

And what you have done in the premises, do you then make return to this court, together with this writ.

Witness, The Honorable Arthur J. Tuttle, Judge of the District Court of the United States for the Eastern District of Michigan, this 29th day of July, 1914, and of the Independence of the United States the one hundred and thirty-ninth.

[L. S.]

(Sgd.) ELMER W. VOORHEIS, *Clerk*.

9 EASTERN DISTRICT OF MICHIGAN,

Southern Division, ss:

Returned not served, May 20, 1915, by order of attorneys,

HENRY BEHRENDT,

U. S. Marshal,

By H. O. TURNER,

Chief Deputy.

Claim of Cambria Steel Company.

(Filed Oct. 22, 1914.)

And now comes the Cambria Steel Company in the above matter and makes claim against the Capital Transportation Company, petitioner and libellant, and against the said steamship "Benjamin Noble" as follows:

1. That the Cambria Steel Company is a corporation duly existing under the laws of the State of Pennsylvania and lately was the owner of a cargo of 2951 840/2240ths tons of steel rail.

2. That on or about the 10th day of March, 1914, the Cambria Steel Company entered into a contract with the Capital Transportation Company through its officers, agents and employees wherein and whereby the said Transportation Company agreed to transport and carry for the claimant in one shipment a cargo of 3,000 tons of steel rails from the port of Conneaut, Ohio, to the port of Superior, Wisconsin, at the rate of eighty cents per gross ton.

3. In pursuance of the said agreement the said Capital Transportation Company on or about the 18th day of April, 1914, offered the steamship "Benj. Noble" then lying at the port of Conneaut, Ohio, to carry the said cargo. The libellant had no knowledge as to the number of tons said steamer could safely load, or as to whether she was seaworthy to navigate upon Lake Superior at the time of the said proposed voyage, nor had the libellant any knowledge as to the competency or experience of her master and crew.

4. In accordance with the instructions of the said Capital Transportation Company, its officers, agents and employees as well as the master of the said steamship "Benj. Noble," the claimant delivered on board the said steamship at Conneaut, Ohio, on or about the 18th day of April, 1914, 2951 840/2240ths tons of steel rail of the value of \$96,418.85 to be carried by the said steamer to the port of Superior and there delivered to the Great Northern Railway Company or its assigns, the dangers of navigation, fire and collision excepted. Upon information and belief the claimant avers that when the said steamship left the port of Conneaut, Ohio, upon the said intended voyage she was in command of an incompetent and inexperienced master; she was overloaded and unseaworthy to withstand the ordinary perils of the seas which might be expected during the month of April upon Lake Superior. She was unseaworthy by reason of the fact that her scuppers would not operate, nor were they capable of carrying off water which might come upon the deck of the said steamer; and her steering gear was not in proper working condition. All of said facts were known or could have been known to the Capital Transportation Company by the exercise of reasonable care.

5. Upon information and belief the claimant avers that by reason of the unseaworthiness of said steamer from the causes aforesaid and because she was improperly manned and equipped she did some time on or about the 28th day of April, 1914, while on Lake Superior, and during a severe but not unusual storm founder and become a total loss with her entire cargo and crew, in consequence of which the claimant sustained damages to the extent of \$96,418.85, for which amount it makes claim against the Capital Transportation Company and the said steamship.

Dated Johnstown, Pa., October 13th, 1914.

CAMBRIA STEEL CO.,

Per J. L. REPLOGLE,

Vice-President and General Manager of Sales.

COUNTY OF ALLEGHENY,
State of Penna., ss:

William A. Sproull, being duly sworn according to law, deposes
and says that he is the Traffic Manager of the Cambria Steel
11 Company the claimant above named. That the facts set
forth in the foregoing claim so far as they are within his
knowledge are true, and so far as they are stated upon information
and belief, he believes them to be true, and expects to be able to prove
the same upon the trial of this cause.

WILLIAM A. SPROULL.

Sworn to and subscribed before me this 15 day of October, A. D.
1914.

[NOTARIAL SEAL.]

EMMA LEA MONTGOMERY,

Notary Public.

My Commission expires February 21/15.

Answer and Claim of Cambria Steel Company.

(Filed Oct. 22, 1914.)

To the Honorable the Judges of the Said Court:

The answer and claim of the Cambria Steel Company, a corpora-
tion duly organized under the laws of the State of Pennsylvania, to
the libel and petition of the Capital Transportation Company, of De-
troit, in said district, in a cause of limitation of liability, civil and
maritime, alleges as follows:

1. Respondent believes that the facts set forth in the first para-
graph of the libel and petition to be true, excepting that it is in-
formed the said steamship "Benjamin Noble" was a common carrier
as well as a private carrier at different times.

2. Respondent has no knowledge as to the facts set forth in the
second paragraph of the libel and petition, concerning the voyage of
the steamship "Benjamin Noble" from Cleveland to Conneaut, Ohio,
and denies the material-ty of the same, but if material demands strict
proof of the same. Respondent further avers that if upon the voy-
age from Cleveland to Conneaut the vessel was manned by the
12 same master, officers and crew as upon the voyage from Con-
neaut, Ohio, to Superior, Wisconsin, that the said vessel was
improperly manned and equipped for either of the said voyages.

3. Respondent admits that on or about the 18th day of April,
1914, there was laden on board the steamship "Benjamin Noble" by
the respondent at the port of Conneaut, Ohio, 2951 840/2240 tons
of steel rail, part of a total shipment of 3,000 tons, to be carried by
the said steamship from the said port of Conneaut, Ohio, to the port
of Superior, Wisconsin, and there delivered to the Great Northern
Railway Company, or its assigns, upon the payment of an agreed
freight, the dangers of navigation, fire and collision excepted.

Respondent admits that the said rails were so delivered on board the said steamer in pursuance of a contract of affreightment entered into between the respondent and the Capital Transportation Company, owners of the steamship "Benjamin Noble," their officers, agents and employees. The quantity of said steel rails so laden on board the said steamer was fixed and determined solely by the Capital Transportation Company and the master of the said steamship "Benjamin Noble."

The respondent denies that it was understood and agreed that the said steamer would not be able to take the entire quantity of 3,000 tons upon a single trip, but on the contrary it was expressly stipulated that the entire 3,000 tons of said rails should be carried as a single cargo. The respondent had no knowledge as to what vessel would be furnished by the libellant, nor as to the quantity which the "Benjamin Noble" could safely and properly carry, but relied solely upon the libellant to furnish a vessel that could safely carry the full shipment of 3,000 tons.

4. Respondent denies that when the said steamer "Benjamin Noble" with the cargo of steel rails laden thereon left the port of Conneaut, Ohio, on or about April 18, 1914, she was either staunch, seaworthy or fully and properly manned and equipped, or fit for her intended voyage. The respondent avers upon information and belief that said steamer was over-loaded to such an extent as to be absolutely unseaworthy to weather the storms which might be expected at that time of the year upon Lake Superior, and her master was neither sufficiently experienced nor competent to have control of the loading or navigation of said ship. These facts were known or could have been known by the libellant by the exercise of care and prudence.

13 Respondent admits upon information and belief that after the said vessel had gotten to sea she met a severe storm and foundered with all on board. It denies, however, that the said storm was unusual or more severe than was expected at that season of the year upon Lake Superior, and denies that the velocity of the wind during the said storm was seventy miles an hour, and denies that the said vessel sank as a result of any dangers of navigation or of the seas, which could not have been weathered if the said vessel was seaworthy and properly manned and equipped.

Respondent has no knowledge as to what, if any, portion of the said vessel has been recovered, but if the same is material demands strict proof thereof.

5. Respondent denies that the loss of the said steamer and her cargo occurred without the privity or knowledge of the petitioner, and denies that it resulted solely from the severity of the storm and the dangers and perils of navigation encountered by the said vessel, and denies that it was not occasioned by the fault or negligence on the part of the petitioner. The respondent avers that the said vessel was not in command of a competent master, officers or crew; that she was overloaded and unseaworthy to withstand the ordinary storms that might be expected to occur upon Lake Superior during the month of April, and avers that the said vessel was lost because

she was unseaworthy and improperly manned and equipped. Respondent further avers that the petitioner knew or could have known by the exercise of reasonable care that the master was incompetent and inexperienced, and also knew that the said vessel when she started on her voyage from Conneaut, Ohio, to Superior, Wisconsin, was over-loaded and unseaworthy.

Respondent admits that the Cambria Steel Company has entered a suit in the United States District Court for the Eastern District of Pennsylvania, In Admiralty, and a suit in the District Court of the United States for the Northern District of Illinois, In Admiralty, seeking to recover against the petitioner the sum of \$96,418.85, as the value of the cargo of rails lost on board the said steamer. Respondent has no knowledge as to whether or not other claims have been made or threatened against the petitioner, but if they have respondent avers that they are immaterial so far as its rights are concerned. If material, respondent requires strict proof of the same.

14 Respondent has no knowledge as to the remaining facts set forth in the said fifth paragraph of said libel, and demands strict proof of the same, if material.

6. The respondent denies that the petitioner is entitled to the benefit of the provisions of Sections 4283-4284-4285 of the Revised Statutes of the United States and of the various Acts amendatory thereof and supplemental thereto, or to the benefit of Section 18 of the Act of Congress of June 26, 1884, and the amendments thereto.

7. By way of further answer to the libel and petition filed herein, the respondent avers:

That on or about the 10th day of March, A. D. 1914, the respondent having 3,000 tons of rails to be carried from Conneaut, Ohio, to Superior, Wisconsin, entered into a contract with the Capital Transportation Company, through its officers, agents and employees, wherein and whereby the said Transportation Company agreed to carry the said rails between the said ports at the rate of 80¢ per gross ton. Shortly thereafter the respondent received information that the vessel which libellant intended to employ for the voyage was the steamer "Benjamin Noble." Respondent had no knowledge as to the load which said steamship could safely carry, nor had it any information as to the competency of her master. The steamer reported at Conneaut, Ohio, shortly before April 18, 1914, and the respondent by direction of the master, with the knowledge of the owners, loaded 2951 840/2240 tons of steel rail upon the said vessel, and there was issued to the respondent a bill of lading bearing date the 18th day of April, 1914, a copy of which is hereto attached marked Exhibit "A" and made a part hereof.

8. The respondent upon information and belief avers that the vessel set sail from the port of Conneaut, Ohio, bound for the port of Superior, Wisconsin, on the 18th day of April, 1914, about five o'clock P. M., loaded with the said steel rails, and carrying in addition thereto bunker coal for the voyage, fresh water and stores, weighing together several hundred additional tons. By reason of the weight of the said cargo, coal, water and stores, the said vessel

at the inception of the voyage was greatly over-loaded and wholly unseaworthy for the voyage which she was about to undertake. She had but little, if any, freeboard, and her scuppers were of such a type, size and construction that they would not properly open so as to permit the ship to free herself from any seas which she might ship. The steering gear of the said vessel also was not in good order.

The respondent had no knowledge of the unseaworthiness of said vessel, but the same were within the privity and knowledge of the libellant, her owners, at and before the commencement of the said voyage.

9. Upon information and belief the respondent avers that on or about the 28th day of April, 1914, when the said steamer was on Lake Superior in the vicinity of Knife Island about thirty miles from Duluth, Wisconsin, during a severe but not unusual gale for that season of the year in that vicinity, foundered and became a total loss with her cargo and crew, due, as the respondent is informed and believes, and, therefore, avers, to the unseaworthiness and improper manning of the said vessel as hereinbefore alleged.

10. Respondent avers that the said steel rails loaded on board the said vessel at the time of her loss were of the value of \$96,418.85, and which said loss the respondent seeks to recover from the Capital Transportation Company, libellant herein.

By reason of the premises the respondent denies that the petitioner is entitled to any limitation of its liability or to exemption from liability as prayed for in the said libel and petition.

Wherefore the respondent prays that the said petition and libel may be dismissed with costs.

CAMBRIA STEEL CO.,

Per J. L. REPLOGLE,

Vice-President and General Manager of Sales.

EASTERN DISTRICT OF PENNSYLVANIA, ss:

William A. Sproull, being duly sworn according to law, deposes and says that he is the Traffic Manager of the Cambria Steel Company, the respondent above named, and that the facts set forth in the foregoing Answer so far as they are within his knowledge are true, and so far as they are stated upon information he believes them to be true.

WILLIAM A. SPROULL.

Sworn to and subscribed before me this 15th day of October, A. D. 1914.

EMMA LEA MONTGOMERY,

Notary Public.

My Commission expires February 21, 1915.

16 *Answer of Petitioner to Claim of Cambria Steel Co.*

(Filed February 1, 1915.)

To said Court:

The answer of the said petitioner to the claim of Cambria Steel Company, herein filed, is as follows:

1. It is without sufficient information to either admit or deny the allegations of Article 1 of said claim, and therefore prays that the same may be required to be proved.

2. As to Article 2 of said claim, it says that the facts are as herein stated and not otherwise:—during the month of March, 1914, it was agreed between Mitchell & Co., brokers, at Cleveland, and M. A. Hanna & Co., representing the Cambria Steel Company, that the "Benj. Noble" would carry three thousand tons of steel rails from Conneaut to Superior, at eighty cents per ton, loading and discharge by shippers and consignees, and the dangers of navigation, fire and collision excepted; it was not agreed that said amount should be carried in one shipment but that the portion not laden on the first trip should be taken on a subsequent voyage.

3. As to Article 3, it says that said agreement was made with and for the steamer "Benj. Noble," and that the representatives of the Cambria Steel Company were well acquainted with her carrying capacity, condition and equipment.

4. As to Article 4, it says, that the claimant loaded said steamer at Conneaut, about April 18, with a portion of said rails; it has not sufficient information to admit or deny the allegation as to the quantity and value thereof and therefore prays proof; it was not present at the loading and took no part therein; the quantity laden was in accordance with the judgment of the master, as to a sufficient and proper load for the trip in prospect, and with the acts and instructions of the shipper by whom such loading was done; it admits that the cargo so laden was to be carried to Superior and there delivered to the Great Northern Railway Company, or its assigns, the dangers of navigation, fire and collision excepted; it denies that said steamer was in command of an incompetent and inexperienced master; it denies that she was overloaded and unseaworthy; it denies that her scuppers were insufficient; it denies that her steering gear was not in a proper working condition; and it also denies that any

such matters so alleged in said article were known or could have been known to it by the exercise of reasonable care, and avers that if any such did exist they were wholly without its privity, knowledge, design or neglect.

5. It denies Article 5 of said claim in all respects save this only, that it admits, upon information and belief, that the said steamer, with all on board, foundered and sunk on Lake Superior on or about April 28, 1914, during a severe and extraordinary gale, and became totally lost by reason of perils of the seas and dangers excepted in the bill of lading or agreement under which said cargo was carried, and without any knowledge or privity, negligence or breach of contract on the part of this petitioner.

Wherefore, this petitioner prays that said claim may be dismissed with costs, and that it may have the relief prayed in its original petition in this cause, and such other and further relief as may be just.

**CAPITAL TRANSPORTATION
CO.,**

By JOHN G. DIETZ, *Sec.*,
Petitioner.

MILLER, SMITH, CANFIELD & PERRY,

Proctors for Petitioner.

EASTERN DISTRICT OF MICHIGAN,

County of Wayne, ss:

On this 1st day of February, 1915, personally appeared before me John G. Dietz, secretary of said Petitioner, and made oath that he had read the foregoing petition by him subscribed, and knew its contents; that it was true, excepting as to those portions stated upon information and belief, and that as to such he believed it to be true.

HUGH M. EDWARDS,

Notary Public, Wayne County, Michigan.

My commission will expire June 12, 1918.

18 *Amendment to Answer of Petitioner to Claim of Cambria Steel Co.*

(Filed June 6, 1916.)

6. And further answering said claim, this petitioner says, upon information and belief, that the said Cambria Steel Company is not the real party interested in said claim, but that said claim is in fact prosecuted by the Insurance Company of North America for its own use and benefit; that said insurance company is indebted to this petitioner on account of the disaster mentioned in said claim, in the sum of, to-wit, ten thousand dollars, by reason of its policy of marine insurance in force upon the hull of the "Benj. Noble" at the time of her loss; that said company has heretofore admitted that said loss was caused by perils of the seas and not by any of the causes alleged in said claim; and that said insurance company is not entitled to maintain said claim against this petitioner in the name of the Cambria Steel Company, or otherwise.

**MILLER, SMITH, CANFIELD, PAD-
DOCK & PERRY,**

Proctors for Petitioner.

Order for Production of Records of Engineer's Office.

(Entered Feby. 8th, 1915.)

It appearing to the court that the Capitol Transportation Company as owner of the Steamed "Benjamin Noble" has filed petition for

limitation of liability in the above entitled cause, wherein the said Capitol Transportation Company, petitioner, seeks to receive the benefit of the provisions of Sections 4283, 4284 and 4285 of Revised Statutes of the United States and the various Acts amendatory thereof and supplementary thereto, and the benefit of Section 18 of the Act

of Congress of June 26th, 1884, and the amendments thereto; and it further appearing to the court that in order to do justice and equity in this cause and to all parties intervening therein, it is necessary that the records of the United States Engineer's Office at the United States Ship Canal at Sault Ste. Marie, Michigan, concerning the Steamer "Benjamin Noble" for the seasons of 1909, 1910, 1911, 1912, 1913 and 1914, showing the various passages through the United States Ship Canal at Sault Ste. Marie, Michigan, of the Steamer "Benjamin Noble," the dates of the said passages, the draught of the Steamer "Benjamin Noble" on each of said passages, the nature of her cargo on each of said passages, together with the tonnage thereof, be presented in evidence before this court; and it further appearing that this information can be obtained from or through the United States Engineer's Office, Post Office Building, Detroit, Michigan, on the request of this court;

Now Therefore, it is Ordered that a certified copy of this order be served on the United States Engineer's Office together with a request that said United States Engineer's Office deliver to this court the said records regarding the Steamer "Benjamin Noble" which it has in its possession or in possession of its office at the United States Ship Canal, Sault Ste. Marie, Michigan.

ARTHUR J. TUTTLE,

U. S. District Judge.

Order to Produce Certain Specifications and Drawings.

(Entered February 13, 1915.)

It appearing to the court that the Capitol Transportation Company as owner of the Steamer "Benjamin Noble" has filed petition for limitation of liability in the above entitled cause, wherein the

said Capitol Transportation Company, petitioner, seeks to receive the benefit of the provisions of Sections 4283, 4284 and 4285 of Revised Statutes of the United States and of the various Acts amendatory thereof and supplementary thereto, and the benefit of Section 18 of the Act of Congress of June 26th, 1884, and the amendments thereto; and it further appearing to the court that it is necessary in order to do justice and equity in this cause and to any parties intervening therein, that the plans, drawings and specifications of the Steamer "Benjamin Noble" be produced and submitted to this court, and that John A. Francombe, Manager of said Steamer "Benjamin Noble" be and appear before this court with the plans, specifications and drawings and displacement of scale of the Steamer "Benjamin Noble," which he may have in his possession or under his control;

Now Therefore, it is Ordered, that said John A. Francombe be and

appear before this Honorable Court at the trial of the above entitled cause, at the United States Court Room in the Post Office Building in the City of Detroit at 9:30 A. M., February 16th, 1915, and then and there produce all the plans, drawings and specifications and the displacement of scale of the Steamship "Benjamin Noble" which he may have in his possession or under his control.

It is Further Ordered that a true copy of this order be served upon the said John A. Francombe.

ARTHUR J. TUTTLE,
U. S. District Judge.

Order for Production of Certain Correspondence.

(Entered Feby. 13, 1915.)

It appearing to the court that the Capital Transportation Company as owner of the Steamer "Benjamin Noble" has filed petition for limitation of liability in the above entitled cause, wherein
21 the said Capitol Transportation Company, petitioner, seeks to receive the benefit of the provisions of Sections 4283, 4284 and 4285 of Revised Statutes of the United States and of the various Acts amendatory thereof and supplementary thereto, and the benefit of Section 18 of the Act of Congress of June 26th, 1884, and the amendments thereto; and it further appearing to the court that it is necessary in order to do justice and equity in this cause and to any parties intervening therein, that John A. Francombe, Manager of said Steamer "Benjamin Noble," be and appear before this court, and that he bring with him all correspondence between himself or between the Capitol Transportation Company and Mitchell & Company of Cleveland, Ohio, concerning the chartering of the Steamer "Benjamin Noble" for the voyage in question, together with all correspondence having relation thereto, also all books, papers and records in his possession or in the possession of the Capitol Transportation Company or any of its officers, wherein is shown the quantity of coal and other stores laden on board the Steamer "Benjamin Noble" at the time she left the port of Conneaut, Ohio, on the voyage in question, and at the time she left the port of Detroit in the course of the voyage in question, and the books, papers and records in possession of said John A. Francombe or the Capitol Transportation Company or any officer thereof showing the quantity of coal and other stores and provisions placed upon the said Steamer "Benjamin Noble" when fully provisioned and coaled for voyage on the last voyage of which they have any such record; also all books, papers and records in possession of John A. Francombe or the Capitol Transportation Company or any of the officers thereof, showing the various cargoes carried by the said Steamer "Benjamin Noble," the nature of said cargoes, the tonnage of said cargoes, the port at which they were loaded and the port to which they were carried during the seasons of 1909, 1910, 1911, 1912, 1913 and on the voyage in question in the season of 1914.

Now, Therefore, it is Ordered that said John A. Francombe be and

appear before this Honorable Court at the trial of the above entitled cause, at the United States Court Room in the Post Office Building in the City of Detroit, at 9:30 A. M., February 16th, 1915, and that he bring with him all correspondence between himself or between

22 the Capitol Transportation Company and Mitchell & Company of Cleveland, Ohio, concerning the chartering of the Steamer "Benjamin Noble" for the voyage in question, together with all correspondence having relation thereto, also all books, papers and records in his possession or in the possession of the Capitol Transportation Company or any of its officers, wherein is shown the amount of cargo, the quantity of coal and other stores laden on board the Steamer "Benjamin Noble" at the time she left the port of Conneaut, Ohio, on the voyage in question, and at the time she left the port of Detroit in the course of the voyage in question, and the books, papers and records in possession of said John A. Francombe or the Capitol Transportation Company or any officer thereof showing the amount of cargo, the quantity of coal and other stores and provisions placed upon said Steamer "Benjamin Noble" when fully provisioned and coaled for voyage on the last voyage of which they have any such record; also all books, papers and records in possession of John A. Francombe or the Capitol Transportation Company or any of the officers thereof, showing the various cargoes carried by the said Steamer "Benjamin Noble," the nature of said cargoes, the tonnage of said cargoes, the port at which they were loaded and the port to which they were carried during the seasons of 1909, 1910, 1911, 1912, 1913 and on the voyage in question in the season of 1914.

It is Further Ordered that a true copy of this order be served upon said John A. Francombe.

ARTHUR J. TUTTLE,

U. S. District Judge.

23

Transcript of Testimony.

Before the Hon. Arthur J. Tuttle, Tuesday, February 16, 1915,
2 p. m.

Appearances: Messrs. Hill and Laws, appearing for the Claimants; George Canfield, Esquire, Messrs. Masten and Leckie, Appearing for the Respondents.

Mr. Hill: This is the matter of the Cambria Steel Company against the steamer Benjamin Noble by certain proceedings in attachment in Philadelphia and Chicago, on account of loss of cargo of 2900 and some fractional tons of steel rails shipped on the Steamer Noble—Benjamin Noble—under a charter party made at Cleveland on the 18th day of April, 1914.

This cargo was taken aboard the Steamer Noble at Conneaut, to be delivered under a straight bill of lading to the consignee at Superior, Wisconsin.

The Steamer Noble left on the 18th day of April, and when in

the vicinity of Two Harbors and the Knife Islands in Lake Superior foundered and was lost, together with her entire cargo and crew.

Following the filing of the claim on the part of the Cambria Steel Company for the recovery of the value of this cargo, in the other jurisdiction as I stated, the owners of the Steamer Benjamin Noble, the Capital Transportation Company filed a petition for limitation of liability in this court; consequently the proceedings are here, the claimant having come in in accordance with those proceedings.

The claimant in this case claims it is entitled to recover against the petitioner for the value of this cargo of steel rails, in the amount of something like \$96,000, because the Noble at the time she left port on the trip in question, and also at a subsequent period on the voyage in question, and at the time the loss occurred, was unseaworthy by reason of the fact of being overladen, and further because her captain was incompetent; that those matters were within the privity or knowledge of the owners of the Steamer Noble, by reason of which they are not entitled to limit their liability in these proceedings.

Without going into detail any further than is shown by the pleadings in the case, I will let that stand as our opening statement.

24 The Court: Have any of the claimants anything additional to state?

Mr. Hill: That is the only claim that is filed, I think, your Honor.

Mr. Masten: There is one other claim, a small one, by reason of a collision, a liability of something like \$600, but as that involves only a question of law, nothing will be done with reference to that until after the final disposition of his claim.

The Court: Where was the collision?

Mr. Masten: It was as the vessel left Cleveland to go to Conneaut in order to receive this particular cargo. The question there will arise ultimately, if we should be held in this case at all, as to whether the voyage, for liability purposes, began at Cleveland when she received authority to go to Conneaut to take this cargo, or whether it began at Conneaut when she got her cargo on board.

The Court: Those claimants do not come in?

Mr. Masten: They are in, having filed the claim, but will not take any part in this litigation here.

The Court: Who is going to determine when and whether there was any negligence in the collision, or is that admitted?

Mr. Masten: That would probably be admitted if we should be so unfortunate as not to succeed in this litigation, but it is only a small claim, if they are right about that. By arrangement among ourselves, we have agreed not to trouble about that at this time.

Mr. Hill: I do not think you need to concern yourself with that, your Honor.

The Court: You do not claim anything about that collision as bearing on either of the two questions that you urge here?

Mr. Hill: No, your Honor.

25 The Court: Either the unseaworthiness of the ship or the incompetence of the captain.

Mr. Hill: No, your Honor. We know nothing about that.

The Court: All right.

Mr. Masten: The opening statement was so meagre as not to advise us of anything more than is in the pleadings, that we shall reserve such statement as we may desire to make until the claimant has made its proof, except we deny the fact of the unseaworthiness of the vessel. We also say, if it should be found to be the fact, that was not the cause of the loss anyway.

The Court: I understand the unseaworthiness is directed entirely to the loading, the overloading.

Mr. Hill: The unseaworthiness goes to her overloading and her steering gear and the incompetency of the captain, of course.

The Court: I will put in the third; the overloading, the steering gear and the incompetency of the captain. Now you had better tell me what you claim about the steering gear.

Mr. Hill: If your Honor please, we are rather at a loss as to that; that is a matter that is entirely within the knowledge of the owners of the vessel. However, I think it will develop that the steering gear was not a satisfactory steering gear on previous trips, and that on the particular trip in question, when she was at Detroit on the way up on this voyage, the Noble was stopped here for the purpose of having certain repairs or changes made to her steering gear, to rectify the deficiencies, which had occurred before. That is a matter that is covered by proof within the control of the other side.

If your Honor please, the libelant or claimant in this case took a deposition at Pittsburgh a week or so ago which we would like to read.

I think we would like to have the usual rule of excluding the witnesses from the court room except those who are testifying.

Mr. Masten: We would not have any objection to the rule,
26 except that our crew is all dead, and such witnesses as we have will be experts.

Mr. Hill: That is just the point.

Mr. Masten: I really do not care.

Mr. Hill: I do not urge it.

The Court: I do not want to do it unless one or the other ask it. If either of your ask it I will do so. I might sometimes do it of my own motion.

Mr. Hill: All right.

Mr. Masten: We are not asking it, your Honor.

Mr. Hill: And we do not insist upon it.

The Court: I do not want you to be embarrassed about asking it, and do not take it as anything hostile to the witnesses or the court if you do ask it.

Mr. Hill: We will not insist upon it, your Honor.

The Court: I am glad to have you, in cases where you think it ought to be done, but as I understand, you do not any of you care to ask it in this case. The only thing is if they are held here several days, it is a little entertainment for them to be in here, that is all, and I am glad to furnish what entertainment I can.

Mr. Laws: This deposition was taken on February 8th, 1915, at

Pittsburgh by agreement, and the witness is William Sproull. Mr. Sproull is the traffic manager of the Cambria Steel Company, the claimant here.

(Deposition of William Sproull was then read by Mr. Laws.)

Deposition of William A. Sproull.

Deposition taken this 8th day of February, 1915, at ten o'clock A. M. at the office of William A. Sproull, 1801 Oliver Building, Pittsburgh, Pennsylvania, by consent of counsel.

All formalities waived except swearing of the witness and the certification of the notary.

27 Present: Francis S. Laws, Esq., of Lewis, Adler and Laws, for Cambria Steel Company; Frank S. Masten, Esq., of Holding, Duncan & Leckie, for Capital Steamship Company.

WILLIAM A. SPROULL, SWORN.

Direct examination.

By Mr. Laws:

Q. Mr. Sproull, what is your business?

A. Traffic Manager of Cambria Steel Co.

Q. And where is your place of business?

A. My office is at Rooms 1801-02 Oliver Building, Pittsburgh, Pennsylvania.

Q. What was your position in March and April, 1914?

A. Traffic Manager, Cambria Steel Co.

Q. Did you have anything to do with the shipment of some steel rails from the Cambria Steel Company to the Great Northern Railway Company in March, 1914?

A. I arranged through Hanna & Company to have a steamer provided to take these rails.

Q. And where are Hanna & Company located?

A. Cleveland, Ohio.

Q. What was the quantity of rails that were to be included in that shipment?

A. Our contract called for 3,000 tons.

Q. That is, your contract with whom?

A. Our advices from Hanna & Company were to the effect that we had been covered for the transportation of 3,000 tons on the Steamer Noble.

Q. Did your transaction between your company, the Cambria Steel Company, and Hanna & Company take the form of correspondence?

A. Yes; correspondence.

Q. Have you got the originals of the letters from Hanna & Company on the subject and copies of the letters to Hanna on the subject?

A. I have copies here, but the originals were all sent to Mr. Davies.

Q. Who is Mr. Davies?

A. Assistant solicitor of the Cambria Steel Company at Johnstown.

Q. Will you look at the documents I hand you, which purport to be copies of the correspondence between the Cambria Steel Company and Hanna & Company on the subject of the Noble, and tell me whether or not they are correct copies of the correspondence on that subject?

A. I have every reason to believe that they are.

28 By Mr. Laws:

Letters referred to being letter of March 5, 1914, from William A. Sproull, Traffic Manager, to Messrs. M. A. Hanna & Company; letter of March 6, 1914, from M. A. Hanna & Company to William A. Sproull, Traffic Manager, Cambria Steel Company; letter of March 9, 1914, from William A. Sproull, Traffic Manager, to M. A. Hanna & Company; letter of March 10, 1914, from M. A. Hanna & Co. to Mr. William A. Sproull, Traffic Manager, letter of March 11, 1914, from William A. Sproull, Traffic Manager to M. A. Hanna & Company. Said letters offered in evidence and marked Cambria No. 1, consisting of five letters.

Counsel for the Capital Steamship Company does not object to the use of copies in lieu of the originals if subject to the right, if requested, to compare with the originals at trial, but does object to the competency and materiality of the evidence. We will accept them as correct copies.

Mr. Laws:

Q. Did your company receive a bill of lading from the steamer carrying these rails?

A. We did.

Q. Will you look at the paper dated April 18, 1914, and say whether or not that is a copy of the bill of lading, minus the signature, however, for the steel rails?

A. I have every reason to believe that it is.

Q. How many tons of steel rails does it appear were loaded on the steamer according to the bill of lading?

A. 2,951 gross tons and 840 pounds.

Q. When you say gross tons how much weight is figured in each ton?

A. 2,240 pounds. The total weight in pounds was 6,611,080 pounds.

Q. Did you have any knowledge of the Steamer Benjamin Noble at or before the time of this shipment?

A. I don't recall her.

Q. Did you know anything about her carrying capacity?

A. No, sir.

Q. Did you know anything about her size as to dimensions or gross tonnage or net tonnage?

A. No, sir.

Q. Did anybody in your company have anything to do with this

shipment excepting yourself? I mean with respect to the chartering, to the carrying?

A. No.

Q. Were Hanna & Company paid anything by the Cambria Steel Company or did the Cambria Steel Company agree to pay them anything for engaging a steamer to carry this shipment of steel rails?

A. No arrangement was made to pay them any commission and no commission or remuneration was paid them for their services.

Q. Were these steel rails delivered to the consignee at Superior, Wisconsin?

A. No, sir; they were never delivered.

Q. Did you ever receive any advices from anybody as to why they were not delivered?

A. Except the common knowledge that the vessel never reached her destination and has never been heard from.

Q. Mr. Sproull, can you give us what the market value of the steel rails, of the 2,951 gross tons, was on April 18, 1914?

A. \$95,385.87.

Q. Was there any change in the market value of those rails on April 28, 1914?

A. No, sir.

Q. Was there any difference in the market value at Conneaut, Ohio, or at Superior, Wisconsin, on either of those dates?

A. The difference would be the freight from Conneaut to Superior.

Q. In favor of which point?

A. Of course, the value would be less at Conneaut.

Q. In other words, the figures that you have given us, \$95,385.87, is the market value of Conneaut, Ohio, is it, on April 18th?

A. That is the market value at Superior.

Q. That is at Superior, is it?

A. Yes, sir.

Q. Can you tell us what the market value at Conneaut, Ohio, on April 18th would be?

A. The amount of freight which we would have to pay on these rails is \$2,361.10, which would make the difference between the price at Superior and the value at Conneaut, \$93,024.77.

Q. You say the price at Superior. Do you mean by that the market value at Superior?

A. Yes.

Mr. Laws: I offer in evidence the copy of the bill of lading, dated April 18, 1914, referred to, subject to correction upon comparison with the original that we have and which through inadvertence I have neglected to bring along but which will be produced at the trial.

By Mr. Masten: No objection.

By Mr. Laws:

Q. This case is on trial for the 16th of February, 1914, in Detroit,

before the United States District Court there. Will it be possible for you to attend that trial?

A. It would not.

30 Q. Tell us why?

A. We have a hearing before the Inter-State Commerce Commission on that day; on the 15th, but it will consume several days.

Q. And you are obliged to attend that hearing?

A. Yes, sir.

Cross-examination.

By Mr. Masten:

Q. Messrs. Hanna & Company are sales agents for the Cambria Steel Company, are they not?

A. I think they do act as sales agents in ore, not in the finished product.

Q. Your relation with M. A. Hanna & Company is that they are your sales agents for ore but not for the sale of finished product?

A. Yes, sir.

Q. Isn't it true that where a brokerage concern, and I understand M. A. Hanna & Company to be such, and are sales agents, that that includes the procuring of the vessel for transportation of the property and attending to the time of arrival and delivery and things of that character?

A. Those are the duties they perform in connection with ore, yes, sir.

Q. And for that they receive a fixed compensation per ton?

A. I presume they do; I have no positive knowledge.

Q. And where a consumer of ore has a relation of that kind with a broker it is usual and customary is it not, that if they have shipments now and then of other property, the same brokers look after them?

A. I don't know whether it is customary or not, but we were covered for a cargo of rails and they procured the vessel.

Q. By reason of their relation as sales agents?

A. Yes, sir.

Q. Whether or not any commission was paid to any one by your Company or by M. A. Hanna & Company, I presume you have no personal knowledge?

A. I have no personal knowledge, no, sir; of any commission being paid.

Q. But so far as you were personally concerned, no commission was paid?

A. No commission was paid by the Cambria Steel Co.

Q. But whatever service was performed by Hanna & Company was incidental to their relations as sales agents, and as a matter of courtesy, and that would be the usual relation of that kind in the lake and rail trade?

A. I assume so, but I don't know positively as to that.

Q. You have spoken of the market value at Superior and at Conneaut. Were those rails of the ordinary standard kind or
31 were they of a special construction?

A. They were the ordinary kind.

Q. Both as to weight and length?

A. Both as to weight and length.

Q. Is there now or was there in April or any time during the season of 1914, any market for rails of that character at Conneaut?

A. At Conneaut?

Q. Yes.

A. No, sir; no market at Conneaut.

Q. Was there any market for rails of that character at Superior as a market?

A. I should say yes.

Q. Who deals in steel rails of that character on the market at Superior, Wisconsin?

A. Why, practically every manufacturer of steel rails in this country with the possible exception of the Colorado and Alabama mills.

Q. The delivery of rails is merely for re-distribution to some other place?

A. Yes, and because they would not all be used *as* Conneaut.

Q. When you speak of market value with reference to these rails, either at Conneaut or Superior, have you in mind the selling price of the particular rails in question?

A. It is the selling price.

Q. By the way, was this a special lot of 3,000 tons or was it a larger quantity or was it a smaller quantity?

A. It was a special contract for 3,000 tons.

Q. It might or might not be increased to a larger quantity than that?

A. It might have been increased, yes, sir.

Q. Do you know when that sale was made? Or did you have anything to do with that?

A. I had nothing to do with the sale; no, sir.

Q. Then so far as you know, this price that you have given is an invoice price of a sale made at some certain time?

A. Yes.

Q. Where were the weights of those rails taken? Do you know? You are the traffic manager and I assume you would know.

A. They were taken at Johnstown.

Q. In the sale of rails of this character do they sell them by the ton?

A. The sale is made on the ton basis, on the price per ton.

Q. Your quotations are they made by the ton or by the pound?

A. By the 100 ton. As a rule they are made by the gross ton of 2240 pounds.

Q. I presume you yourself do not know when this particular sale was made?

A. I do not.

32 Q. As to whether the market at that time was below or above at the date of the shipment you have no knowledge?

A. No, sir; except that the market price of rails has been pretty steady for years. There has been no variation.

Q. But you have no personal knowledge with reference to that?

A. No, sir.

Q. And as to the weighing, I presume you have no knowledge. You received the weight, or some of your people did, in the ordinary course of business as to the number of rails that went forward?

A. That was taken from the records of the loaders at the mill.

Q. As I understand, you were advised by your agents M. A. Hanna & Company, that you had been covered for lake shipment of 3,000 tons?

A. Yes, sir.

Q. But your bill of lading which you have only calls for 2,951 and 840 pounds, gross tons?

A. Yes.

Q. That would indicate, would it not, that the entire shipment did not go forward by this vessel?

A. Yes, sir.

Q. Do you know by whom or how the amount in tons of the rails which were left on the dock was determined?

A. It was determined by the contents of the cars that were not unloaded.

Q. And from the total of 3,000, the number of cars which were not unloaded would indicate the number of tons in that car, and if they were left on the dock you simply took that from the 3,000 tons?

A. Yes, there might be a variation there owing to the fact that possibly our total shipment did not exactly amount to 3,000 tons.

Q. That is what I was going to ask you, about the 3,000 tons. Have you any way of determining whether that was the exact quantity which went forward for shipment at that time?

A. The exact quantity which went forward for shipment at that time was 3,000 gross tons of 2240 pounds per ton and 2080 pounds.

Q. And that you call the 3,000 tons?

A. Yes.

Q. Now have you the number of the car there which was not loaded onto the ship?

A. P. L. 533273.

Q. Mr. Sproull, how long have you been traffic manager or connected with the traffic department of the Cambria Steel Company?

A. That is like asking a woman her age. I have been traffic manager of the Cambria Steel Company almost twenty-five years.

Q. And you have had occasion heretofore to ship by railroad and lake to upper lake ports?

A. Yes.

Q. Is it or not the custom for the ship to take the weights furnished by the shipper, that is, they don't weigh it themselves?

33

A. No, they accept the railroad bill of lading weights.

Q. And the shipper or the shipper's agents furnish the data which

is incorporated in the bill of lading as to quality and quantity, do they not?

A. Yes, sir.

Q. And very frequently has it not been your experience that the bill of lading is not issued until the shipment is actually started forward and the shipper's agent can incorporate it into the bill of lading the exact quantity that goes forward?

A. The bills of lading are issued before the shipments go forward.

Q. Then when the lading is completed, does the vessel remain there until they—take a case of this kind—the computation is made as to the number of tons on the car not loaded and have that filled in or do they go ahead and the agent of shipper fill that in later?

A. My belief—

Q. Do you know how that is done? I don't care for your belief—do you know?

A. I could not say that I know.

Q. I understood you to say you had no knowledge, that is, the Cambria Steel Company had no knowledge of the name of the vessel by which these rails were to go forward? You yourself had no knowledge?

A. I had no knowledge beyond the fact that Hanna & Company advised they had secured a vessel.

Q. Now as to whether Hanna & Company knew anything about the steamer Noble by which they did go forward, have you any knowledge?

A. I don't know what they know about her.

Q. You were simply speaking in reference to your own knowledge?

A. Yes, sir.

Q. On shipments of this character, Mr. Sproull, your company carries marine insurance, does it not?

Objected to as incompetent, irrelevant and immaterial.

A. We always insure our lake cargo shipments.

By Mr. Masten: Let the record show that the fact of insurance in and of itself we do not contend is material, but we do and shall contend however that it is material in this case, if our information is correct, that claim was made upon the Insurance Company for this loss, but the fact of insurance in and of itself for that we claim nothing.

Q. Do you know, Mr. Sproull, whether claim was made on the Insurance Company for the loss of these rails?

34 Question is objected to for the same reason as given to the preceding question.

Mr. Masten: And the same explanation is given as to our belief in its materiality.

A. The claim was made.

Q. In making that claim, you claim, I presume, upon the invoice value of the rails in the ordinary course?

Same objection, with same explanation.

A. Yes.

Q. And do you recall whether that was the invoice value plus ten per cent or the straight invoice value?

A. It was the invoice value plus 10% and the cost of loading at Conneaut.

Q. Now that cost of loading at Conneaut was paid I assume by the Cambria Steel Co.?

A. It was; yes, sir.

Q. Are those men there, those stevedores we will call them, in your employ or in the employ of the dock company?

A. They are in the employ of the Pittsburgh and Conneaut Dock Company.

Q. And you pay to the Pittsburgh & Conneaut Dock Company?

A. Yes, sir.

Q. And is there any relation between your company and the Pittsburgh & Conneaut Dock Company?

Q. They simply attend to the loading, send you a bill and you pay it?

A. Yes, sir.

Q. And that was done in this case?

A. Yes.

Q. Has that loss been paid to you?

Same objection as last preceding objection, with same explanation.

A. It has; yes.

Q. And paid on the basis of the claim?

A. And paid on the basis of the claim, yes.

Q. I understood you to say in connection with this shipment that you were the man that had it in charge?

A. Yes, sir.

Q. That claim was made, was it not, on the basis that this cargo, which did not reach its destination, was lost by the peril of the sea, and that your insurer should, therefore, pay you the total loss as insured?

Same objection made with same explanation.

A. Yes.

35 Q. The name of the Cambria Steel Company, therefore, in this litigation is being used, as they have the right, by virtue of their being subrogated to the rights of the Cambria Steel Company, having paid a total loss to your company?

A. Yes.

Q. Your company has received this money for the loss from the insurance company and if they are fortunate as to make recovery, you are to reimburse them for the amount that they paid you?

A. Yes, those are the facts as I understood them in the case.

Q. Do you recall the name of the Insurance Company?

A. Yes—

Q. That had the insurance on these particular rails?

A. Our policy was with the Insurance Company of North America.

Q. Did you have more than a single policy or did they cover the entire risk?

A. We had just a single policy.

Q. Have you a copy of that policy in this office, or have you the original policy?

It is agreed that all this examination as to insurance be subject to the same objection and same explanation.

A. That is the original blanket policy. We have the original blanket policy and the press copy of the certificate which was issued against that policy.

Q. Your practice, I take it, is this: You have a blanket policy covering all of your various shipments?

A. Yes.

Q. Then when you make a specific shipment a certificate is issued covering the amount and value of that?

A. Yes.

Q. And that was the course you followed in this case?

A. Yes.

Q. Are those certificates, as I assume they are, furnished by the company directly to you so that you simply fill them in and return them to yourselves? I take it that is the practice here?

A. The insurance is declared from time to time as the cargoes are made.

Q. From your examination of this certificate would you say that there was simply furnished to your insurer the data and then they issued the certificate——

A. They issued a certificate in full.

Q. And it is on that certificate on a particular case that their premium is calculated?

A. Yes.

By Mr. Masten: Let the record show at this point that inasmuch as these are the originals, that we call on the Cambria Steel Company in this case to produce at the trial either the original policy of insurance under which this cargo was insured, together with this certificate thereon or a copy thereof. We will assume
36 this to be a copy of the original if Mr. Laws knows it to be a copy.

By Mr. Masten:

Q. I infer from the course of your information and from the copies of correspondence admitted, that you as traffic manager at least had no direct communication with the master of the vessel Benjamin Noble?

A. None whatever.

Q. Or with the owners?

A. No, sir.

Q. Or with any one as agent of the vessel?

A. No, sir.

Q. Any communication of that character was through your agents, M. A. Hanna & Co.?

A. Yes, sir.

By Mr. Laws: We object to the question, the statement, "through your agents," that being a question open and possibly at law who M. A. Hanna & Company were.

By Mr. Masten: I will eliminate from the question "agents" and say through M. A. Hanna & Company.

Redirect examination.

By Mr. Laws:

Q. Mr. Sproull, did your company have anything to do with determining the actual amount that was put on the steamer as a load?

A. We have nothing to do with that.

Q. That was determined by whom?

A. That was determined and I think is determined by the captain of the vessel.

Testimony is taken subject to objection as to all matters under the question of insurance.

Q. You said that the policy included the invoice and 10%. Do the figures which you have given us as the value of these rails—the market value of these rails include that 10%?

A. No, the figures which I gave as the market value did not include the 10%.

Q. In other words, \$95,385.87 does not include 10%?

A. No, sir, that was the amount of our invoices against the Great Northern Railway.

Q. Where is the nearest point to either Conneaut or Superior that there would be a market for steel rails, if there is such a place, where you could say what the market value of them was on a particular day?

A. It would seem to me, Mr. Laws, that the market value of rails on any given date is a question which is very easily susceptible of proof, because it is very easy to obtain what the price is at
37 Pittsburgh, Chicago, Buffalo, at any time.

Q. Is there any material difference between the different places that you have mentioned of the price of steel rails on any given date?

A. There might be.

Q. What I wanted to get at was, these rails were shipped from Conneaut, Ohio, on April 18, 1914, and they were apparently, according to the best information, lost as the vessel was approaching Superior on the morning of April 28, 1914. I want to get some point, the nearest point, at which it could be determined what the market value of these rails would have been on April 18th and on April 28th?

A. The market value, so far as that particular cargo was concerned, was the price at which we had agreed to deliver those rails to the Great Northern Railway at Superior, Wisconsin.

Q. What would that be, the market value. I mean to say that the mere selling price might not determine the market value on a particular date. Is there any place where it could be ascertained what steel rails of that class were selling for in the market at these two points?

A. You could ascertain what the price of rails was at Chicago or at Buffalo on those dates.

Q. And could you from those places get the market value of these rails on those dates?

A. Yes, it would be very easy to ascertain what rails were selling for at Chicago or at Buffalo on those dates.

Q. Have you any data here from which you could give us that market price on those dates?

A. No, sir; I have not.

Q. You could not get that here?

A. No, sir.

Q. Would there be any material variation between the figures you have given us and the market value at those places on those dates, do you think?

A. No, there would practically be no difference.

By Mr. Masten: I will not regard you as being foreclosed as to that market value.

Q. Mr. Sproull, you said that the Insurance Company of North America, I think, paid to your company the value of these rails. Do you remember when you said paid, do you remember whether or not there was a receipt given at that time covering this payment as you call it?

A. As a matter of fact I don't remember.

Q. You don't remember that?

A. No, sir.

Q. You don't remember the fact, Mr. Sproull, that there was some question as to whether it should be a payment or advance and that it was finally made as an advance?

38

Objected to.

A. No. I recall that there was such correspondence.

Q. Have you got copies of those receipts to the North America and the letter that you wrote? Have you got a copy of the receipt that you gave to the Insurance Company of North America on that subject?

A. If we have a copy of that receipt it is in the possession of our attorneys in Johnstown; I have not got it here.

Q. You don't happen to have it with you in your office now?

A. No, sir.

Q. So that when you say it was paid you meant that your company received it in accordance with the terms of the receipt that was given at the time?

A. Yes, sir.

Q. With regard to the weights of these various cars, Mr. Sproull, where are those weights taken? The weights of these cars of steel rails, where are they taken from?

A. They are taken in the first place on our own scales at Johnstown, Pa.

Q. Then does anybody else weigh them?

A. I think the railroad company accepts our weights.

Q. Your weights?

A. Yes. You understand, Mr. Laws, that the weights are susceptible to proof because of the fact that these rails are all of a given length and they weigh so many pounds per yard.

Q. How are the weights of the rails in the car determined?

A. The cars which we get from the railroad in which to load rails are light-weight when they are received by us in order to tell their actual light-weight. They are then loaded and the estimated weight based on the weight of the rails per yard is given to our Transportation department. The cars are then weighed on our scales and if there is any perceptible variation, say running over one per cent or anything of that kind between the estimated weight and the actual scale weight the cars are re-checked and re-weighed, in order to make sure that our weight is correct.

Q. Are the weights by which you ship the same weights on which you settle with the customer on?

A. Yes.

Q. And are the same weights upon which you pay the railroad company for transportation?

A. They are; they are all identical.

Q. Have you any data from the railroad company showing the weights of the various cars containing these steel rails?

A. No, sir.

39 Q. You have no data, no bills of lading, or anything of that character from the Pennsylvania Railroad Co.?

A. No, sir; I haven't those copies. I have copies of invoices, but not of bills of lading.

Q. Where would they be obtainable?

A. We could furnish copies of this bill of lading.

Q. Would your office at Johnstown have the exact weights as taken of each car when it was loaded?

A. We have the bills of lading issued by the railroad company and I think there is a record of our weights.

Q. Would it be possible to get those today?

A. That I would have to ascertain.

Q. You would have to ascertain that?

A. Yes.

Q. You said, Mr. Sproull, that when this arrangement for transportation by steamer of this cargo was made you didn't know the steamer by which it was to go. Will you look at the correspondence and tell us when you knew for the first time the name of the steamer by which it was to be carried?

A. That information was given me by letter from M. A. Hanna & Company, dated March 10, 1914.

Recross-examination.

By Mr. Masten.

Q. Mr. Sproull, in the course of the last ten years have you had occasion to ship rails from your company via Conneaut?

A. We have several seasons shipped rails via Conneaut; yes, sir.

Q. And the loading in other instances has been done, as in this instance, by the dock company there?

A. Yes, sir.

Q. I notice by looking at the pleading filed in this case that it purports to have been sworn to by William A. Sproull as traffic manager. You are the William A. Sproull referred to there?

A. Yes.

Q. Do you have any recollection of signing other pleadings in connection with this matter other than the case pending at Detroit? Your company brought an action at Philadelphia I understand and also one at Chicago, or do you recall that?

A. I don't recall that.

By Mr. Masten: I would also like to have produced at the trial subject to objection, the proof of loss submitted to the Insurance Company of North America or a copy thereof on which the Cambria Steel Company made claim under the insurance that was heretofore made.

40 By Mr. Laws: This is to be subject to the same objection.

Deposition closed.

STATE OF PENNSYLVANIA,

County of Allegheny,

City of Pittsburgh, ss:

I, J. L. Trefaller, Jr., a Notary Public in and for the County and State aforesaid, duly commissioned and qualified, do hereby certify that the above named William A. Sproull was by me first duly sworn to testify the truth, the whole truth and nothing but the truth, and that his testimony, as above set forth, was taken at the time and place specified, counsel for the respective parties being present and assenting thereto.

I do further certify that I am not counsel, attorney or relative of either party, or otherwise interested in the event of this cause.

In Witness Whereof, I have hereunto set my hand and seal of office, this 8th day of February, A. D. 1915.

[SEAL.]

J. L. TREFALLER, JR.,

Notary Public.

My commission expires March 25, 1917.

"Cross-examination * * *:

Q. On vessels of this character your company carries marine insurance, does it not?"

Mr. Laws: That is objected to. It leads up to a series of questions with respect to the insurance. We deem that entirely incompetent and irrelevant in this matter. We desire to raise that question right now, as to whether any evidence of the fact that this cargo was insured is relevant in this case at all. The same question has been passed upon by the Federal courts many times, this exact question, under circumstances almost exactly like it. I refer to the case of H. C. Judd, 117 Federal, and again in 128. The same question precisely arose, and the courts have said that the fact that the cargo was insured is entirely immaterial, any more than the fact a vessel is insured against its loss. That none of those things is material. The sole question is whether or not—whatever the issue might be in this case, unseaworthiness—in which the cargo is carried.

I want to make that point at this time, first, because it will save us a great deal of time and second, because we have brought here one of the officers of the insurance company, one of the assistant officers who knows about this matter, who is coming on here
41 at our request, and we do not want to hold him any longer than we have to. If it is not relevant I want to let him go away. If it is relevant, we will have to hold him. If your Honor would care to have a reference to the decisions more in detail I will be glad to call for them and refer your Honor to those decisions now. I can give your Honor the page and volume in which this question has been absolutely discussed twice. I remember in the case of Judd and Rood that case was tried three times in the District Court of Pennsylvania, and the main contest was as to whether there was negligence in the storing of some goods in Galveston, and the primary defense was as to whether the goods had been insured. That case went to the Circuit Court of Appeals three times, and there are two opinions on the subject. That was really the question that was discussed each time, as to the admissibility of that evidence. The court goes over it very carefully. There is the other case in the United States Circuit Court of Appeals of New York. I have forgotten what the circuit is, but the New York Circuit, in which the same thing arose. The court stated it had nothing more to do with it, any more than if one man kills another, it is no defense to that issue to show that his wife is better off by having a policy of indemnity insurance; the fact that the widow happened to have any insurance is none of its legal concern.

That is our position and we would like to raise that question right now and have your Honor pass upon it.

Mr. Masten: We want to be heard, your Honor. It is quite useless for counsel to argue that proposition. In a much earlier case than any of those cited, the Supreme Court have said that the owner of the goods had a perfect right to proceed for the benefit of the insurance company. That was so clearly settled that it was no longer open to argument, so we have not offered this examination for that purpose. If that was the only point involved it would have never been offered, but we put a note in the record at that time that counsel might not be surprised, to this effect: "Let the record show

that the fact of the insurance in and of itself we do not contend is material, but we do wish to contend however that it is material in this case, if our information is correct that the claim was made upon the insurance company for this loss, but as to the fact of the insurance in and of itself and for that we claim nothing."

We do claim, your Honor, and your Honor will observe 42 during the rest of the record, we claim if a man or an insurance company or the insurer makes a declaration against interests inconsistent with the execution arising out of something, that it is material to have that fact appear in the case. Our information was, and we expect to prove, if your Honor holds this line of proof to be material, that the Cambria Steel Company, who is the claimant in this case, presented a claim for this very loss which they are now claiming, a loss by unseaworthiness and negligence, against the insurance company for the loss by reason of the peril of the sea. That will be our claim.

This action, while brought in the name of the owner of the goods, as they have a perfect right to do, that action is in reality an action by the Insurance Company of North America, in the name of the Cambria Steel Company. They have a perfect right to do that. We do claim it is material to the issue in the case, and we do claim that some declaration outside of that particular case inconsistent with its claim in that case as a reason for benefit therefor, on that ground we claim it is material, if our information is correct as to what will develop. Of course if your Honor excludes, why we would not have the right to show the other.

The Court: I do not get the point as to that. If you can show they have said something—

Mr. Masten: That is the only way we can show what they say, and under which they make claim for loss by peril of the sea. Now we undertake to show that they had made a claim as a loss by peril of the sea, and collected it, and then turn around now and claim negligence. It is a declaration made by an interest in the same matter against his own interest. For that reason we say it is material.

The Court: Where will you show the declaration?

Mr. Masten: The only way we can show the declaration, if we do not succeed in showing that, the record shows that we claim nothing for the fact of the insurance, not the fact of it. It is all one transaction.

The Court: How did you expect to show the declaration?

Mr. Masten: It is shown right in the deposition, by the 43 man to whom this question was propounded, who says it was made a claim for loss by peril of the sea, and they collected their insurance, and now bring an action for the benefit of the insurance company. It is a direct declaration contrary to what they set up here, claiming in one place it is a loss by peril of the sea, and say you are answerable. Now if that is true, we are not answerable in this action, on the claim against us for the benefit of that party, that it is a loss by unseaworthiness.

I am familiar with the case to which Mr. Laws refers.

The Court: What is the question there?

Mr. Laws: The question is as follows: "On ships of this character your company carries marine insurance, does it not?" It is not even cross examination, your Honor. We did not go into the question of insurance. If my friend wanted to call Mr. Sproull as his own witness, it seems to me he could, but he did not call him as his witness. He is undertaking on a question on cross examination to develop an entirely new line which we did not develop at all and did not go into and did not touch upon.

Mr. Masten: Is your objection based upon that?

Mr. Laws: I do not say that here.

Mr. Masten: I would very gladly have made him my witness.

The Court: I will let them come in the record, but in admitting it I will state that the fact of the insurance can not in any way bar you of your right, and I won't let it. It might be admissible as bearing upon the claim of the witness as to whether or not he had not made some claim inconsistent with the one he is now claiming. He is the individual that had knowledge of it and took an active part as I understood the witness.

Mr. Laws: He did.

The Court: I will admit it as part of the cross examination.

Mr. Masten: I want, in anticipation of what your Honor has said, to add one word for the benefit of the record: That
44 unless the transaction is explained, we shall show very respectful authorities that it is not only material but almost conclusive.

Mr. Laws: If the court allows it to come in, my friend need not worry about the explanation; the explanation is right here on ice. May we have an exception, your Honor?

The Court: Yes. I think the record already shows clearly that I am admitting that only for the purpose of the effect it may have at the present time on this witness.

Mr. Masten: We say frankly to your Honor that is all we claim for it, is the declaration against interest.

Mr. Laws: It will not be necessary for us to take a separate exception to each one?

The Court: You may have an exception as to that character of testimony. I take it, it is safer for me to do that way, because then the record is complete up there. In the case to which you refer, evidently by excluding something they sent it back for further testimony.

Mr. Laws: No, your Honor, the jury disagreed. The first jury disagreed and the second jury disagreed and the court gave binding instructions to the jury upon that matter, and the Court of Appeals said it had nothing to do with it.

The Court: The jury will agree in this case. We will have a full record. I agree with you fully as to your argument to me.

Mr. Laws: I think that is safer.

The Court: You may proceed.

(The reading of the deposition was then continued.)

Mr. Laws: I would like to offer the Bill of Lading.

Mr. Masten: I did furnish to Mr. Laws a copy of the Bill of Lading with the understanding that he was to produce the original if he could at the trial. That which he produces is so near like what we believe to be the copy, in fact agreeing so far as the material parts are concerned, with the exception of the fact that it states 80¢ per gross ton, and the copy we had was simply 80¢ per net ton, it
15 purports to be a signed copy, we accept it as the Bill of Lading issued for this cargo.

(Bill of Lading then marked Exhibit 1.)

Mr. Laws: We offer in evidence the Bill of Lading marked Exhibit 1, as a receipt for these goods, as showing what they were.

Mr. Masten: Is it not in fact everything which appears on the face of it?

Mr. Laws: I have my doubt as to that.

Mr. Masten: We shall contend that it is not only that but also evidence of the contract under which the ship carried the goods, which is rather a question of law than a question of fact. We do not want to take it as a mere receipt. We think it is both a receipt and contract, and that will be our contention.

Mr. Laws: We offer it as a receipt for the goods, showing the condition, quantity weight and so on.

The Court: At this time it will be received. Later we will interpret it. That is Exhibit No. 1.

Mr. Laws: Mr. Masten and I agreed that if we produced a copy of the Bill of Lading with the weight of the cargo of steel rails sworn to, that that might be introduced in evidence instead of our going over to Johnstown and taking the testimony.

Mr. Masten: Yes. Our agreement was to the effect they need not produce the mill man who actually weighed them, if they had this from the records in the ordinary course.

(Bill of Lading then marked Exhibit 2.)

Mr. Laws: I wish to offer in evidence Exhibit 2, relating to the bills of lading, showing the weight of the cargo of steel rails shipped by the Cambria Steel Company to Conneaut, Ohio, covering the same rails.

The Court: It will be received.

Mr. Laws: I also wish to offer in evidence correspondence between the Cambria Steel Company and M. A. Hanna Company.
46 I might say, Mr. Masten, I will just offer the copy, and you and I if we wish can compare the original which I have here, and if there are any corrections we can make them.

Mr. Masten: It now being a conceded fact the M. A. Hanna Company were the agents of the Cambria Steel Company, I can not see what materiality the correspondence might have. Have you the originals?

Mr. Laws: Yes, we have the originals to compare with.

The Court: We will take a five minute recess at this time.

(Recess.)

(Correspondence above referred to was then marked Exhibit 3.)

Mr. Masten: Our objection is withdrawn. The copies are sufficient.

The Court: That is as to Exhibit 3?

Mr. Masten: Yes.

The Court: It will be admitted.

CHARLES McMORRIS, being duly sworn by the court on behalf of the claimant, testified as follows:

Examined.

By Mr. Laws:

Q. What is your business, Mr. McMorris?

A. I am employed by Hanna & Company as charter agent.

Q. At what city?

A. Cleveland, Ohio.

Q. Was that your business in March, 1914?

A. Yes, sir.

Q. Did you have anything to do with making a contract with the Cambria Steel Company for the shipment of 3,000 tons of steel rails from Conneaut, Ohio, to Superior, Wisconsin?

A. I chartered the vessel to float the rails.

Q. And from whom did you charter the vessel?

A. Captain L. Mitchell of the Mitchell Company at Cleveland, Ohio.

Q. What is their business?

A. Vessel brokers.

Q. Please tell us exactly how that charter was made?

47 A. Mr. Sproull the traffic manager of the Cambria Steel Company wrote us, M. A. Hanna Company, that he had 3,000 tons of rails to float for the Great Northern Railway Company of Superior. On receipt of that letter I called up Captain Mitchell and asked him to get me a quotation on it, which he did, and to get me a boat of that size, if that quotation was satisfactory.

Q. What did Captain Mitchell say to you?

A. He told me he would float them for 80c. a ton.

Q. How many conversations altogether did you have, Mr. McMorris, with Captain Mitchell?

A. Possibly two or three.

Q. As near as you can will you give us in chronological order what was said at the first conversation, what was said at the second and the third?

A. On the first conversation I wanted the rate for the floating of the 3,000 tons; on the second conversation the rate was satisfactory and I told him to go ahead and get me a boat to float 3,000 tons. I wanted to float it in one cargo, to get a boat to take that cargo.

Q. What did he say?

A. Oh the third conversation he had confirmed the charter and

called me up to notify me of that fact, and that he had secured the Noble.

Q. Was there anything said about the tonnage that was to go on the Noble?

A. The 3,000 tons was to go in one shipment on the Noble.

Q. Did you pay Mr. Mitchell or his firm anything for the securing of that charter?

A. Nothing at all.

Q. Did you know anything about the Noble prior to the time that he mentioned her name to you?

A. I had heard of her.

Q. Did you know anything about her capacity as to tonnage or size or anything of that kind?

A. Approximately I knew she would carry something near that amount.

Q. Had you ever employed her in any way?

A. Not that I remember.

Q. Did you know accurately, I mean, as to what she would carry?

A. No, no.

Q. Did you know who the master of the Steamer Noble was to be for this voyage?

A. I had no idea.

Q. You had no idea. Was there any confirmation or letter between you and the Mitchell Company as to the charter or was it entirely verbal?

A. It was all verbal; over the telephone.

Q. Over the telephone?

A. Yes.

48 Q. What was the rate for which these rails were to be carried?

A. 80¢ per gross ton.

Q. What do you mean by that?

A. 2,240 pounds.

Cross-examination.

By Mr. Leckie:

Q. As I understand it, your deal was entirely with Captain Mitchell of the Mitchell Company?

A. Entirely, yes.

Q. You made the charter with him?

A. Yes.

Q. At the time you did that, you did not know whom he was going to give the business to?

A. No, I did not.

Q. The Noble was not mentioned until some time after that?

A. No.

Q. In regard to the 3,000 tons. That information about the carriage of the 3,000 tons came from Captain Mitchell also?

A. Yes. I told him I wanted the boat to carry that amount.

Q. And the matter of the ordering of the cargo forward like that

is very frequently—don't you find it usually to be the case that the captain or the representative of the boat or anybody who has anything to do with that is inclined to order more forward than she will carry, rather than less?

A. This was an order in advance. I was to secure a boat that would float this specific tonnage.

Q. Was not there something previous to that time that that was a 5,000 ton consignment?

A. Not as I remember.

Q. Or could be made so?

A. Not as I recall.

Q. We will get back to the other question. In ordering cargoes of ore or rails or coal, or any kind of cargoes which you are familiar with, is it not a fact that there will be usually more ordered forward than the boats will carry?

Mr. Laws: It seems to be that the sole question we are confronted with,—we are concerned with—is that the charter party was, not what the custom may be in another case. Unless your Honor cares to hear it we will object to it, as going too far afield.

The Court: I will take his answer.

(Exception for claimant.)

A. Am I to answer the question?

Q. Yes.

A. So far as my practice goes it does not make any difference; I have a great many thousands of materials on wheels all the time, and what is left goes on another boat. The only time I clean up is at the end of the season.

Q. And the mere fact there may be a little more ordered forward than the boat will carry, that does not mean anything?

A. It does not mean anything to me.

Q. In this particular transaction, some time after you did know that the Noble was to take this shipment, Mr. Francombe came to your office, didn't he?

A. He called I think, yes.

Q. And that was before the cargo was actually loaded, or about the time the boat was going to load it?

A. I don't recall when it was, Mr. Leei.

Q. In that connection he said to you it is quite likely the boat would not take all of that, but he would take it the next trip, did he not?

A. I don't recall that. I don't recall that.

Q. You remember his coming into your office with Mr. Truby?

A. I remember his coming with Mr. Truby. I don't recall the conversation that you mention.

Q. Do you remember whether or not at that time you said there will be more rails going forward?

A. I said there would probably be more.

Q. Will you say that there was not such a conversation in which

he said she probably would not take it all but that he would take it the next trip?

A. I don't recall that.

Q. You would not say it did not take place?

A. I would not say; no, sir.

Q. You know as a matter of fact that they did leave some?

A. Yes.

Q. You simply sent that forward on some other shipment?

A. Yes. It was floated later.

Q. Do you recollect whether or not Mr. Franseombe stated to you at that time that the boat would stop on the next trip and take whatever was left, whatever the master left?

A. I don't recall anything about that. The conversation I recall was about another charter for any future rails which might come up.

Q. Again, you would not say that the conversation did not take place?

A. No. It was just a routine matter, and there was nothing to call my attention to it.

Q. That is all.

Redirect examination.

By Mr. Laws:

50 Q. Mr. McMorris, there was a small quantity of those rails of that 3,000 tons, that did not go forward on the Noble?

A. Yes, sir.

Q. Do you know how many cars?

A. One car.

Q. Do you know the number of that car?

A. It is on my correspondence there.

Q. I will show you. Can you tell us which car it was?

A. I have the number of the car marked there in the correspondence.

Q. You can tell off-hand from this?

A. I think so.

Q. Will you look it through and tell us which car it was, please?

(Witness then examined correspondence.)

A. P. L. 853773.

Q. What was the weight of the steel rails in that car?

A. 111,000 pounds; about 49 tons and some odd pounds.

Recross-examination.

By Mr. Leekie:

Q. I will ask you to look at that letter and see whether that is your signature and whether you wrote that (handing letter to witness)?

A. Yes.

Q. And refreshing your recollection from that, will you not now

admit that it was agreed between you and Mr. Franscombe that he was to take forward on the next trip what there might be left?

A. No, I would not. It may have come from the Mitchell Company.

Q. What do you mean by "may have come from the Mitchell Company?"

A. That suggestion that he take this 50 tons that was left there. I don't recollect whether I had that talk with the Mitchell Company, Captain L. Mitchell or Mr. Franscombe, that in case we were not able to secure another boat to take what was left there, the Noble was to take it on her next trip.

Q. You will admit however that such an arrangement was made with somebody?

A. One or the other. I would not say it was Mr. Franscombe.

Redirect examination.

By Mr. Laws:

Q. In other words, it was agreed between Mr. Franscombe and you, or Mr. Mitchell and you, that the Noble might leave 50 tons of that 3,000 tons on this particular voyage. That is what they wanted to leave?

A. No. This letter was written after it was left.

Q. That is after it was left? I see. Written after it was left.

51 Mr. Leckie: This will be Exhibit 4.

(Letter above referred to then marked Exhibit 4.)

Mr. Laws: If your Honor please, we understand that Mr. Mitchell is the broker and agent for the Capital Transportation Company. I understand we have the right to call the agent of the company as if under cross examination. I am not entirely familiar with your practice, but I rather understood that was the practice.

Mr. Masten: We shall at least require them to show first he is the agent of the company, because we shall contend he is not. That he is an ordinary broker.

The Court: I will permit you to call him as a witness of course, and I will be governed by the kind of questions I will let you ask by the kind of answers which he gives you.

ALFRED MITCHELL, being duly sworn on behalf of the claimant testified as follow-:

Examined.

By Mr. Laws:

Q. Mr. Mitchell, where do you reside?

A. Cleveland, Ohio.

Q. What is your business?

A. Vessel agent.

Q. Was that your business in March, 1914?

A. Yes, sir.

Q. You are Mr. Alfred Mitchell?

A. Yes.

Q. Do you know Mr. McMorris of the Hanna Company, the gentleman who was on the witness stand?

A. Yes, sir.

Q. Did you have anything to do with chartering the Steamer Benjamin Nobel in March, 1914, for the purpose of carrying a cargo of steel rails from Conneaut to Superior?

A. Yes, sir.

Q. Will you kindly state to his Honor just exactly what you had to do with it?

A. I had the chartering of her the same as I would any other vessel.

Q. No, but tell us what you did, what Mr. McMorris said to you and what you said to him. What he said to you first?

A. Mr. McMorris came in the office one day and he said he was going to have some rails to float from Conneaut to the head of Lake

52 Superior. I said I was very glad of it, that we had the Noble there with a load of grain, and I could furnish the Noble to him the first trip out, which met with his requirements. He said what will you take them for? I told him I would float them at 80¢. A few days afterwards he came back and he said go ahead.

Q. What was said about the quantity of rails?

A. He said he had 3,000 tons.

Q. And what did you do, if anything, with Mr. Franscombe?

A. I called Mr. Franscombe up on the long distance telephone and confirmed the charter.

Q. What do you mean by confirmed the charter? Tell us what you said to Mr. Franscombe and what he said to you?

A. I called Mr. Franscombe up and I said to him I had chartered the Benjamin Noble to M. A. Hanna Company, a cargo of steel rails, Conneaut to the head of Lake Superior, 80¢.

Q. Did you tell him the quantity she was expected to carry?

A. To Mr. Franscombe?

Q. Yes.

A. No, sir.

The Court: Who is Mr. Franscombe?

Mr. Laws: The general manager and owner of the Steamer Noble.

By Mr. Laws (continuing):

Q. Mr. Mitchell, who paid for your services in connection with the charter and the securing of this charter?

A. The Capital Transportation Company.

Q. That is Mr. Franscombe's company?

A. Yes, sir.

Q. Hanna & Company never paid you anything for your services in connection with this matter at all?

A. No, sir.

Q. What did you have to do with the Steamer Noble? What did

you have to do with her? What relation did you have with the Steamer Noble at this time?

A. No other than I would with any other boat that I chartered.

Q. Was she in your charge, I mean?

A. So far as getting that cargo.

Q. So far as getting that cargo was concerned?

A. Yes, sir.

Q. Had you gotten other cargoes for her?

A. Yes, sir.

Q. Were you general broker for Mr. Franscombe or the Capital Transportation Company for this boat?

A. Whenever they wanted a cargo that we had.

53 Q. Yes. Well, what I meant is this: Did you charter this boat upon your own volition without consulting with Mr. Franscombe, or did you consult with him before you made the charter?

A. I consulted him; surely.

Q. You consulted him?

A. Yes, sir.

Q. Before you made the charter. Now tell us how you consulted him before you made the charter, what you said to him and what he said to you?

A. I said to Mr. Franscombe, on the long distance telephone, I could get him a load of steel rails from Conneaut to the head of Lake Superior at 80¢.

Q. And what did he say?

A. He said to take it.

Q. He said to take it?

A. Yes, sir.

Q. And when he said to take it, what did you do next?

A. I notified Mr. McMorris of M. A. Hanna Company we would accept the cargo.

Q. That you would accept the cargo?

A. Yes.

Mr. Laws: Cross-examine, or examine, he is your witness.

Cross-examination.

By Mr. Masten:

Q. Captain Mitchell, Mitchell Company is a partnership of which you are one member of the firm?

A. Yes, sir.

Q. They are ordinary vessel brokers?

A. Yes, sir.

Q. Now it is true that a vessel broker on the Great Lakes, or men having a cargo to ship, I will say, an odd shipment of this kind particularly, will come to a vessel broker and say I have a cargo of about so many tons of steel rails or structural iron or coal, what can you get me a boat for?

A. Yes, sir.

Mr. Laws: Just a moment. We object to the question because the sole question we are concerned with here is what the contract was and what was done in this case. We are not concerned with what is generally done, but what was done in this case. We therefore object to this question.

The Court: The objection will be overruled.

Exception for claimant.

By Mr. Masten (continuing):

Q. When Mr. McMorris called on you in this case, you sought around for a vessel to carry the cargo which he wanted to carry, to see what you could get a boat for?

A. Yes, sir.

54 Q. And when the manager of that boat said to you "I will take that cargo," you thereupon, as you said you had done in this case, said to Mr. McMorris, we will take it?

A. Yes, sir.

Q. Now the Noble did not take the entire 3,000 tons or whatever the quantity was; she left something of the consignment on the dock?

A. I was so informed afterwards, yes.

Q. And by whom were you informed?

A. By Mr. McMorris.

Q. Did you have any knowledge of the fact she was going to leave or was likely to leave any part of that consignment on the dock at Conneaut before she actually sailed? Was anything said as to the quantity that should go on her?

A. If there was anything, it was shortly before she left on Saturday.

Q. On the Saturday, before she left?

A. Yes.

Q. And what was that and by whom?

A. I was informed she would not be able—now just a minute—I don't know whether it was the dock agent or somebody called us up and said the Noble would not be able to take all of the rails. I said, in person, in reply, that the master of the Noble had absolute control, to take just what rails he saw fit, whether it was the whole or two-thirds or half. That is what I said to the party who talked to me.

Q. And your recollection is that was some dock agent?

A. I could not say; I know it was not the master.

Q. You have done a great deal of business in the course of the last few years with the dock at Conneaut?

A. Quite a quantity.

Q. In reference to loading or discharging vessels there. When you want to communicate with them you call up the dock office, do you?

A. I always call the dock agent.

Q. And in their communications with you, when you have chartered a boat—

Mr. Laws: We object to this line of examination. I understand your Honor lets it in?

The Court: Yes.

Exception for claimant.

By Mr. Masten (continuing):

Q. As I understood your answer on direct examination was that you said to Mr. McMorris you would float that cargo?

A. Yes, sir.

55 Q. If you had not been able to get the Steamer Noble to do that, what would you have done, gotten some other boat? I mean endeavored to have gotten some other boat?

A. The reason I gave him the Noble, to the best of my ability, there was no question in my own mind whatever, and there is not today, that she would take the 3,000 tons and more. That was the sole reason and the only reason I gave them the Noble.

Q. If you had not been able to get the Noble to take this particular cargo, what would you have said to Mr. McMorris that you could not float it, or would you have endeavored to get some other boat to do it?

A. I would state the next boat I can get for that is the Fisher, with a capacity of 2,000 tons.

Q. And if the Fisher had taken it at the rate of freight offered, would you have given it to them?

A. If he had accepted it.

Q. If the freight rate was 80¢ as to her?

A. Yes.

Redirect examination.

By Mr. Laws:

Q. Mr. Mitchell, while this boat was loading at Conneaut, did the captain call you up several times?

A. No, sir. He did not call me up several times. He called me up three times.

Q. Three times?

A. Yes, sir.

Q. What did he call you up about?

A. Because he was instructed to call me up.

Q. No. What did he talk to you about. What did he say to you?

A. I done the talking. I would ask him — he was getting along and he would tell me. The next day at 11 o'clock he would call me again. He called me three days in succession at 11 o'clock.

Q. Did you give him instructions to call you up every day at 11 o'clock?

A. Precisely.

Q. What did you give him instructions to call you up every day at 11 o'clock for?

A. It is common usage.

Q. And what was it he told you at 11 o'clock every day?

A. He was to listen to what I told him.

Q. Didn't he say a word to you at the time he called you up?

A. Yes. He would answer my questions.

Q. Nothing else?

A. No, sir.

Q. What questions did you ask him?

A. I asked him how he was getting along. When do you expect to be loaded?

Q. And is this practically all you asked him?

A. My friend, I told you.

56 Q. And is that practically all you asked him?

A. Yes.

Q. And you did that every day?

A. Three days in succession at 11 o'clock; Thursday, Friday and Saturday. I will give you the days.

Q. And exactly what you said now is the only conversation that he had or you had at those telephone conversations at 11 o'clock every day. Is that correct?

A. I would ask him every day at 11 o'clock how he was getting along, and he would repeat to me, and that was the end of it.

Q. What would he repeat to you?

A. He said how much he thought he had in.

Q. And how much did he say he had in the first time he talked to you?

A. I can't remember.

Q. How much did he say he thought he had in the second time?

A. I don't recollect.

Q. How much did he say he had in the third time?

A. At 11 o'clock he figured about 2,650 tons.

Q. About 2,650 tons?

A. That is what he said.

Q. What day was that?

A. Saturday.

Q. What day of the month do you know?

A. That was the 18th.

Q. About 11 o'clock?

A. Yes, sir.

Q. Tell us everything he said to you on Saturday, April 18th about 11 o'clock?

A. I have told you all.

Q. And that is everything he said to you?

A. Yes, sir.

Q. And did he call you up twice on that day?

A. No, sir.

Q. Did he call you up twice on any day?

A. No, sir.

Q. How would he come to call you up each day at 11 o'clock?

A. That was his instructions from me before he left Cleveland.

Q. Had you engaged the captain?

A. No, sir.

Q. Who did?

A. I do not know.

Q. You do not know?

A. No, sir.

Q. You did not engage him?

A. No, sir.

Q. Who brought him into your office?

A. He came in of his own accord.

Q. How did he come to come in there, do you know?

A. Yes, sir. Just a minute. I suppose he knew before he left home we were his agents and representatives. You want to understand he had been in and out of our office several times.

57 Q. And when he came in there—how did he just happen to come in on this occasion? Who did engage him?

A. Which occasion?

Q. Did you engage him?

A. No, sir.

Q. You did not engage him?

A. No, sir.

Q. You do not know who did engage him?

A. No, sir.

Q. How did you know he was engaged as captain for this boat?

A. Because he came in there and introduced himself.

Q. What did he say?

A. He said he was the gentleman who was going to sail the Benjamin Noble, and he understood I was the representative and agent at Cleveland.

Q. And that is the first knowledge you had that he was the captain of the boat; that he was going to be captain of the boat on this trip?

A. Yes, sir.

Q. Had he ever been captain of this boat on any previous trip?

A. I don't know.

Q. Do you know whether he had ever been on this boat on any previous trip?

A. I don't know, sir.

Q. What instructions did you give him when he came in to see you on this occasion when he said he was going to be captain of the boat?

A. I gave him none.

Q. Did not give him any?

A. No, sir.

Q. He just came in and introduced himself. You did not say anything to him and he walked out?

A. I don't know. I didn't say anything.

Q. What happened? What was said, do you remember?

A. No. Of course I don't remember.

Q. That is all, Mr. Mitchell.

A. All right, sir.

GALLOWAY C. MORRIS, Junior, after being duly sworn on behalf of the claimants testified as follows:

Examined.

By Mr. Laws:

Q. Mr. Morris, what is your business?

A. I am connected with the Insurance Company of North America.

Q. And their home office is where?

A. Philadelphia, Pa.

Q. Did you have anything to do with the loss in connection with the cargo of steel rails belonging to the Cambria Steel Company, which was said to have foundered in April, 1914, while this load of steel rails was on board?

A. Yes, sir.

58 Q. Did your company have a policy of insurance upon those steel rails?

A. We had an open policy issued to the Cambria Steel Co. covering all of their shipments of rails.

Q. Look at the paper which I hand you and see whether or not that is the policy?

A. It is the original policy.

Q. And through whom did the Cambria Steel Company effect that insurance?

A. Through their insurance brokers, Curtin & Brocki, at Philadelphia.

Q. Their insurance brokers at Philadelphia?

A. Yes, sir.

Q. Subsequent to that time did you get a notice from any one—was a certificate issued to cover this particular cargo?

A. Yes.

Q. Look at the paper which I hand you and see whether or not that is the original certificate?

A. That is the original certificate.

The Court: I think we will have the open policy marked Exhibit 5 and the certificate Exhibit 6. They have been identified.

Policy of insurance marked Exhibit 5; certificate marked Exhibit 6.

By Mr. Laws (continuing):

Q. Did you receive any notice of claim for the loss of this cargo?

A. Messrs. Curtin & Brocki notified us verbally in the first instance that it was reported the vessel had been lost, and claim would be made in due course.

Q. Look at the paper which I hand you and tell us what that is?

A. That is a statement of claim filed with the insurance company of North America by the Cambria Steel Company through their insurance brokers.

Q. Whom?

A. Messrs. Curtin & Brocki.

Q. Did that come by mail or by hand?

A. My recollection is it was delivered by hand.

Q. Their office is quite close to yours?

A. About one block.

Q. In Philadelphia?

A. Yes, sir.

Q. Was there any formal proof or any proof of loss furnished by the Cambria Steel Company directly or through their brokers for this claim?

A. There were the customary proofs of loss. There was no sworn affidavit such as is customary in fire insurance or other branches.

Marine proofs of loss consist of endorsed bills of lading, the
59 original insurance certificate, the protest of the master, if available, the insurance certificate for the policy.

Q. What about the invoices and the weights?

A. The several sets of invoices; I thought I stated that. The several sets of invoices.

(Paper marked Exhibit 8.)

Q. Look at the bunch of papers which I hand you, and which has been marked Exhibit 8, and tell me what they are?

A. They are copies of the invoices rendered by the Cambria Steel Company to the Great Northern Railway Company, for whom they had contracted to deliver these rails.

Q. And were they furnished to your company through Messrs. Curtin & Brocki as part of the proof of loss in this case?

A. Either these or the originals were; the exact copy I believe.

Q. Tell us whether or not the Insurance Company of North America, whether or not there were any other proofs of loss submitted in support of this claim than the papers to which I have referred, namely, the certificate, the claim, and those invoices?

A. And the bills of lading.

Q. The bills of lading?

A. Yes.

Q. And is this the bill of lading that was submitted with those documents as part of the proof of loss?

A. It is.

Q. Exhibit 1?

A. Yes.

Q. Was there any other document submitted by the Cambria Steel Company either directly or through its brokers, or anybody, as proof of loss in this case?

A. Yes.

Q. What was there?

A. There was an affidavit from the vessel owners. I think it was the affidavit of Mr. Franscombe.

Mr. Laws: I think I have that at the hotel.

By Mr. Laws (continuing):

Q. You think there was that?

A. Yes. I am sure there was.

Q. Were there any others than those papers to which you have referred, including the affidavit?

A. No, sir.

Mr. Laws: I have that paper at my hotel; I will bring it in to-morrow.

60 By Mr. Laws (continuing):

Q. What attitude did your company take with respect to this claim?

Mr. Masten: That is objected to. We might be interested in the facts not the attitude.

Q. What did your company do with reference to this claim? accept it or not?

A. When we first heard rumors of the loss we tried to find out for the particulars, and when the papers, the invoices were brought in, we immediately noticed the large quantity of tonnage, the large amount of tonnage, which seemed rather excessive to us on a vessel of her size. Therefore, when the premiums for insurance were tendered to us by Messrs. Curtin & Brocki on behalf of the Cambria Steel, we declined to accept it unless they were willing to have us accept it wholly without prejudice to the rights of any of the parties at interest. To this they finally agreed, and the check was deposited.

Q. Was there correspondence on that subject between you and Messrs. Curtin & Brocki?

A. There was.

Q. Look at the papers which I hand you and see whether that is the correspondence on that subject, the original letters from Messrs. Curtin & Brocki, and the press copies from you?

A. This is the original carbon copy of my letter of June 3rd to Messrs. Curtin & Brocki, in which I declined to accept the premiums except with the conditions as outlined in this letter.

Q. And is the next paper the original answer to that?

A. That is the original letter of Messrs. Curtin & Brocki.

Q. What is the date?

A. Dated June 4th, in which they advise before giving a definite reply they would have to communicate with the principal, the Cambria Steel. The second letter addressed to the North America by Messrs. Curtin & Brocki under date of June 8th, and is their final letter in which they advise that the Cambria Steel were quite willing to have us accept the premium without prejudice in accordance with our suggestion.

Q. Did your company accept the premium in accordance with the terms of that correspondence?

A. We did.

Q. Now, Mr. Morris, was any money passed by the Insurance Company of North America to the Cambria Steel Company in connection with this loss? Was there any money passed?

A. When the papers——

61 Q. First, the question is whether any money passed?

A. Yes.

The correspondence then referred to was then marked Exhibits 9, 10 and 11.

Mr. Laws: We wish to offer in evidence Exhibits 9, 10 and 11.
The Court: They will be received.

Other letters marked Exhibits 12, 13 and 14.

By Mr. Laws (continuing):

Q. Were the terms under which this money passed by the Insurance Company of North America, was that according to writing that passed between the Insurance Company of North America and the Cambria Steel Company?

A. Yes; it was.

Q. Look at the letter of June 17th, 1914, marked Exhibit 12, the Insurance Company of North America to the Cambria Steel Company, and look at letter of June 19th, 1914, from the Cambria Steel Company to the Insurance Company of North America, marked Exhibit 13. The paper is dated June 19th, 1914. Say what they are?

A. Exhibit 12 is my letter of June 17th to the Cambria Steel Company in which we formally denied liability for the loss on the ground of unseaworthiness and overloading the vessel, but in which we offered, wholly without prejudice, pending a definite ascertainment, if possible, of the cause of the loss, to advance to them the amount of the claim as a loan. Exhibit 13 was a letter from Mr. Davies, the assistant solicitor of the Cambria Steel agreeing to accept such advance as a loan. Exhibit 14 is the original loan receipt signed by the Cambria Steel Company by Mr. Sproull, the traffic manager.

Mr. Laws: I offer in evidence Exhibits 12, 13 and 14.

The Court: They will be received.

By Mr. Laws (continuing):

Q. Do these papers of June 18th, June 19th and the loan receipt of June 19th, 1914, state the circumstances under which this loan or advance was made by the Insurance Company of North America to the Cambria Steel Company?

A. They do.

Q. And you are the Mr. Morris who is named or whose signature it attached to the letter of the North America to the Cambria Steel Company of June 17th, are you?

A. I am.

Q. Cross examine.

62 Cross-examination.

By Mr. Masten:

Q. That is what you commonly call a loan receipt, is it not in the insurance business?

A. Yes.

Q. And it is more frequently used, is it not, where shipments may have been consigned under a bill of lading, that the carrier at fault had the benefit of any insurance?

A. That it is frequently used in those cases, but in other cases as well.

Q. That is what it is designed for?

A. Not necessarily; no, sir.

Q. Is it not a fact that it had its origin in just that thing, that the carrier responsible for the fault had the benefit of the insurance the loss which was paid, and was not this loan receipt devised for that purpose?

A. I do not know for what purpose it was originally devised. It has always been used in the years I have been connected with the business, for many purposes; that among others.

Q. That is one of the uses, is it not?

A. That is one of the uses.

Q. You said when you heard rumors of the loss of this ship you were impressed with the opinion that the vessel must have been overloaded. I so understood you?

A. Yes.

Q. What information did you have before you at that time upon which you based that?

A. The newspaper accounts the clippings from the papers relative to the vessel being overdue and the load she had aboard.

Q. Did you know her carrying capacity?

A. No, sir.

Q. There was some account in the newspaper also about a heavy storm on the west end of Lake Superior at that time?

A. There was an account there was a storm; how heavy it was I do not know.

Q. You read the article yourself on which you predicated this conclusion there must have been an overloading or might have been?

A. I think I did sir; I don't recollect.

Q. Don't you recall they said something about the gale being so heavy that the lights were blown out at Duluth?

A. I am not clear whether I read that in the paper or not. I don't know.

Q. Are you not sure it was in that same connection you heard about the gale being so severe that the lights were blown out?

A. It is possible.

Q. And did not the same newspaper report, or your informant advise you it was an exceptionally heavy gale?

63 A. I have heard the newspapers say things were heavy gales and other things. I do not always rely on it.

Q. You have heard the newspapers say other things, or other things that are not entirely reliable?

A. Quite so.

Q. But in connection with the loss of the Noble you do recall it was reported that an excessively gale, whether it was true or not?

A. Whether that was in the paper, I think it was; I am not positive.

Q. And it was that upon which you based your conclusion, as you have stated?

A. That was the first thing.

Q. Did it occur to you she might have been lost in the gale, if she was so unfortunate as to be caught in it?

A. Yes, that is possible.

Redirect examination.

By Mr. Laws:

Q. You came on especially at my request, did you? You want to go back, do you, to Philadelphia?

A. I would like to, yes.

Mr. Laws: I want to say to Mr. Masten that Mr. Morris wants to go back. I do not want to hold him here until the end of the trial. If there is anything you want to ask I would like to ask you to do it now.

The Court: Will you need to identify the affidavit?

Mr. Laws: It is at my hotel.

The Court: How about that, the affidavit of Mr. Franscombe?

Mr. Masten: I have just one question.

By Mr. Masten:

Q. Do you recall in what paper it was that you saw this report that you have spoken of?

A. I do not.

Q. Was it a local Philadelphia or a western paper?

A. I really do not know that, sir. It might have been either.

Mr. Laws: I will either show that affidavit to Mr. Masten this evening, and if he is not willing I will call Mr. Morris tomorrow with reference to the affidavit.

Mr. Masten: Just one more question.

By Mr. Masten (continuing):

64 Q. Have you ever had in connection with the Insurance Company of North America, anything to do with Parker Brothers of Detroit, or Mr. Summer, connected with that firm?

A. Not personally.

Q. I mean in a business relation?

A. I believe Parker Bros. are the agents of the North America in Detroit.

Q. And it is your understanding, is it not, that Mr. Summer is connected with that firm in some manner?

A. I do not know. I have no knowledge of the members of the firm.

Q. Have you ever seen his name on documents passing between the Philadelphia office and the Detroit agency?

A. I do not recollect having had any direct correspondence with Parker Bros.

Q. Do you recollect having seen it?

A. No, or having seen any direct correspondence between Messrs. Parker Bros. and the Northern America office in Philadelphia.

Q. The Parker Bros. to which I refer is the Parker Bros., Limited, of Detroit.

A. I really do not know. The name is familiar, sir.

Mr. Laws: If your Honor please, my colleague and myself think that having proved the fact of the delivery of these steel rails to the shipping, the charter party, and the fact of the loss, that we are entitled to rest the case here under some authorities, having made out a *prima facie* case. We would like to get an expression from the court as to whether or not there is any obligation upon us to go further at this time, the ordinary rule being, as I understand it, under the authorities and under the practice, that having shown a delivery of the goods and the loss and not delivery, that the burden is upon the other side to explain the situation.

The Court: Where do you claim the burden of proof is?

Mr. Laws: We think the burden of proof in the first instance, we show the delivery of goods——

The Court: As to the unseaworthiness.

Mr. Laws: Upon the ship entirely. The burden is entirely upon the ship. In other words the goods being delivered to the ship in good order, as per their receipt. The bill of lading at most is a receipt, but I presume under the general admiralty law, if there was

65 a loss from peril of the sea they would be entitled whether there was anything in the bill of lading or not, under the general maritime law, but we will assume for the moment it is in this bill of lading, to establish proof here. That being so, that is an exemption within which they must bring themselves. I think that exact question, sir, has been decided in cases——

The Court: I have just been over a case here of unseaworthiness and I think the burden of proof is as you say, but in that case the claimant put in their proof, and then the ship put in their proof. I will give you a chance to rebut. In a way, and from a practical standpoint, it is fully as fair to the claimant as it would be if it were reversed. You will have your right to rebut in that way.

Mr. Laws: The thing in our mind is this, your Honor. It is subject to your Honor's control entirely, this case, but as I understand it under the rules, the first question is as to whether or not there is liability at all. In that event we have to make out a *prima facie* case of liability; that is, by showing delivery of the goods to the ship under the contract; following that the non-delivery of the goods at the destination. Now having done that, the next step is

for the respondent to clear itself from the question of liability. If they succeed in clearing themselves from the question of liability, that ends the case. If they do not succeed in clearing themselves of the question of liability, and the court concludes they are liable, then the next question is under this petition, and that becomes a live issue as to whether or not they are entitled to limit their liability to the value of the wreckage and freight. If that is so, I assume they would proceed with their testimony to show their exemption from liability, and we, in turn, meet that proposition, and undertake to show they were not entitled to exemption.

The Court: We would be stopping in our proof and changing back and forth a number of times. I think it would tend to a better and more simple method of procedure for you to proceed and put in your proofs and then let them put in theirs. I might not also pursue that course, but I do think in this case that would be the better way.

Mr. Laws: That is entirely a matter within your Honor's discretion and we will accept it.

The Court: That gives you the opening and the closing of the proofs, and the opening and closing argument.

66 Mr. Masten: By not taking any part in the argument at this time, counsel not having said whether they would rest or not, we do not want to waive any rights that may be insisted on later in the trial of this case.

The Court: I take it, it would be satisfactory for them to put in their proofs. I presume they have the right to introduce anything in the nature of rebuttal that is rebuttal.

Mr. Masten: I would prefer to have them say whether they will try their case or rest. By not saying anything we do not want to acquiesce in any statements they make.

Mr. Laws: The court prefers to have us put in our whole case?

The Court: Yes.

JOHN B. REILLY, being duly sworn by the court on behalf of the claimant testified as follows:

Examined.

By Mr. Laws:

Q. Mr. Reilly, please tell us where you live?

A. Conneaut, Ohio.

Q. What is your business, Mr. Reilly?

A. Marine engineer.

Q. How long have you been a marine engineer?

A. 25 years.

Q. What is your particular business at the present moment?

What are you doing in Conneaut?

A. I am engineer on the Steamer Marquette and Bessamer No. 2.

Q. That is a boat that has no connection with the Cambria Steel Company?

A. No, sir.

Q. Were you ever on board the Steamer Benjamin Noble?

A. Yes, sir.

Q. When were you on board her?

A. During the fall of 1909.

Q. For how long were you on board of her?

A. I can't recall exactly what time; I think about three months.

Q. Three months?

A. Yes, sir.

Q. What capacity were you on board the boat?

A. Assistant engineer.

Q. Tell us what waters she was in, sailing in at that time? While you were on board? just what lakes I mean?

A. She has been in several waters between Lake Erie and Duluth; between Lake Erie, Chicago and Escanaba.

Q. Were you ever on board the boat when she was loaded with pig iron or iron ore?

A. Yes, sir.

Q. Tell us about what time that was?

A. It was during that time of service; I can not say exactly. I have not the date.

Q. Do you know how many tons she had on board?

A. Not exactly, no.

Q. Well about how many tons?

A. I think I heard it remarked she had—

Mr. Masten: I object to it.

The Court: I will exclude this.

Q. Were you out in the boat at any time in any kind of bad weather?

Mr. Masten: This designation as to bad weather may become of a good deal of consequence in this case. I think it ought to be described with more particularity.

The Court: This is preliminary. The objection will be overruled. Fix, however, the time and place.

By Mr. Laws (continuing):

Q. Just the first question. Were you out in her in bad weather, were you out on her on any occasion?

A. I could not say the weather was bad; it is a kind of a broad question. I could not say whether the weather was bad.

Q. How about this boat handling when she was loaded?

A. She handled all right.

Mr. Masten: As to her steering ability or engine department?

By Mr. Laws (continuing):

Q. Were you ever on her when there was any difficulty with the boat?

A. No, sir.

Q. Did you see her leave Conneaut, Ohio, on April 18th, 1914?

A. Yes, sir.

Q. Did you notice here draft?

A. No, sir.

Q. At that time?

A. No, sir.

Q. Did not notice how she was loaded at that time?

A. I noticed how she was loaded, but not her draft.

Q. Did you notice her draft?

A. No, sir.

Q. Did you notice how she was loaded?

A. Yes, sir.

Q. Tell us how she was loaded with respect to her depth in the water without giving the exact draft?

68 A. As near as I can remember she was loaded very close to her decks.

Q. Was she ever loaded that deeply while you were on board of her?

A. I think so.

Q. How frequently?

A. Why, I can not say. I do not just remember how many loads.

Q. When she was loaded to that depth was there any difficulty in navigating the boat?

Mr. Masten: That is objected to. I would like to say to the court that I do not like to object ordinarily in cases of this kind, but your Honor will remember that our crew are all dead, and if we seem a little "objective," that is the reason for it more than anything else.

Mr. Hill: He can say what the facts were as he saw them.

The Court: The objection will be overruled.

(Question read.)

A. Not that I know of.

Q. Do you remember of certain cargoes that this boat had on board of pig iron or iron ore?

A. Yes, sir.

Q. Do you remember anything unusual about the handling of the boat on that occasion when she had that cargo on board?

Mr. Masten: When was this, what voyage? How can we check up on such information as that?

The Court: I will take the answer to this one, and that is all.

(Question read.)

A. I don't remember of anything unusual.

The Court: That saves the fixing of the time.

Q. When you were on board this boat at any time, did the boat ever have difficulty in freeing her decks of water?

Mr. Masten: Is not that a little leading in view of the last answer?

The Court: The objection will be overruled.

(Question read.)

A. I noticed there was water came on her decks.

Q. I asked you whether or not she had difficulty in freeing her decks of water on any occasion?

A. I noticed she held water on her decks at some times.

Q. Did that have any effect upon the safety of the boat?

69 Mr. Masten: Isn't that carrying it a little too far? Is that competent? He has qualified in no sense as an expert; simply been an engineer on that boat once.

Objection overruled.

(Question read.)

A. I can not answer that question.

(No cross-examination.)

(Then adjourned until next day at 9:30 A. M.)

Wednesday, February 17th, 1915—9:30 A. M.

Same parties met pursuant to adjournment.

Mr. Hill: The claimants wish to offer in evidence the deposition of Mr. J. P. Reig, taken at Conneaut on January 29th. I wish to say in explanation of the deposition, that it was taken by a young lady who is not experienced in stenographic work, and it is filled up with misspellings, etc., but I think the tenor is all right. It was taken on behalf of the claimants.

The deposition of Mr. J. P. Reig was then read.

Deposition of J. P. Reig.

Depositions taken this 29th day of January, 1915, at the office of A. B. Crittenden Notary Public, in and for Ashtabula County, State of Ohio, at the City of Conneaut, Ohio, at 12 o'clock noon, by consent all formalities waived.

Lewis, Adler & Laws, by Francis S. Laws, of Philadelphia; Warren, Cody, Land & Hill, by Sherwin A. Hill of Detroit, for the Cambria Steel Company, Claimant.

Holding, Masten, Duncan & Leckie, by Frank S. Masten, of Cleveland, for petitioner.

Counsel for claimant claim the depositions taken because of the fact that the witnesses will be unable to appear at the trial of case in Detroit and in taking these testimonies at this time the claimant does not assume any burden of proof in the case by so doing.

Counsel for the petitioner in consenting to the taking of the depositions at this time does not assent to any proposition or contention as to burden of proof or the effect the same may have, leaving that question for the consideration of the court, on trial.

70 J. P. REIG, being duly sworn deposes and says as follows:

Mr. Laws: Mr. Reig, where is your place of residence?

Mr. Reig: Conneaut, Ohio.

Q. How long has that been your place of residence, about?

A. Fifty-four years.

Q. What is your business or profession?

A. I am really connected with the printing business, and for the past sixteen years here I have been employed as Custom Officer at Conneaut Harbor.

Q. In your capacity as collector of the Port of Conneaut, do the vessels clear Conneaut Harbor through your office?

A. They do.

Q. And in clearing, do the vessels report to you the cargo that they have on board?

A. Always.

Q. And that was your position in April, 1914?

A. It was.

Q. Do you know the Steamer Benjamin Noble?

A. Yes. I've seen her.

Q. Did you clear her in April, 1914?

A. I did. And there was a difference between three days in clearing.

Q. What day did she clear?

A. I cannot tell exactly unless I refer to the books.

Q. What date?

A. April, 1914.

Q. Did she ever clear here any time before, to your knowledge?

A. Not to my knowledge.

Q. Did you ever meet the master of the Steamer Noble?

A. I did.

Q. About how many times?

A. About four times.

Q. Did you have any conversation with the captain at the time the vessel cleared?

A. I did.

Q. Please tell the conversation?

Objected to.

A. I gave him his clearance papers and as he was about to leave the office I said, "I should not like to ride with you, you are overloaded."

Q. Did you know how much of steel rails he had on board?

A. He reported 2950 tons.

Q. Mr. Reig, had you had any previous conversation with Captain Eisenhardt, of the Steamer Noble, on the subject of the cargo he was to carry?

Objected to.

71 A. When he was in the office one time he said he was going to take all the rails that were furnished him, of course at that time he did not know how many.

Q. Mr. Reig, in clearing vessels at the Port of Conneaut Harbor, do you know whether or not there is any custom prevailing as to the quantity of load that is taken with relation to the vessel?

Objected to.

A. I have no knowledge as to loading, but from my experience and the knowledge of the Government Registry I always figure that the vessel can carry twice as much as the Government Registry figures it can.

Q. Do you know what the net tonnage was?

A. 887 net tonnage.

Q. I asked you, whether or not from your experience from clearing vessels at the Port of Conneaut Harbor, can you say whether or not they carry double their tonnage?

Objected to.

A. There are very few vessels going out of here with cargoes, but one to about every nine that come in with cargo and from my experience of the tonnage at ports, they usually carry double of the registered tonnage, occasionally a little over usually a little under, as a rule taking the cargoes during the year, is that they carry double their tonnage.

Q. Net tonnage?

A. Net tonnage.

Q. Mr. Reig, I understand that you cannot go to the trial of this case in Detroit on February 16th?

A. Not very well for I am going to start for the South Monday.

Q. Then you cannot attend the trial?

A. Not very well as I have permission to leave Monday, February 1st, not returning until April 3rd.

Q. Did you see the Steamer Noble before she went out?

A. I saw her through my window, when she was loading.

Cross-examination:

Mr. Masten: Mr. Reig, how long have you been connected with the custom office at Conneaut?

Mr. Reig: Twenty-nine years.

Q. Have you at the Port of Conneaut a registry of tonnage?

A. In book form.

Q. Do you know the difference between enrollment and registry?

A. They are both practically the same.

72 Q. Are the vessels at Conneaut enrolled in your office?

A. No.

Q. The enrollment and registry are the same?

A. Yes.

Q. You don't have any registry at Conneaut Harbor?

A. No registry or enrollment are made at this office.

Q. You based your answer to Mr. Law on the fact that you have observed they usually carry about double the enrolled or registered tonnage, and does it make any difference whether it is coal or ore?

A. I have had little experience with coal.

Q. Any grain come in while you were here?

A. No, sir.

Q. What did the Steamer Noble carry?

A. Steel rails.

Q. To the best of your judgment, your judgment would be then, knowing the net enrolled tonnage that a full load of net tonnage would be 1750, and the boat was overloaded how much?

A. 1000 to 1200 tons.

Q. That would be to the outside?

A. The outside.

Q. To whose judgment is the loading of boats left?

A. The loading is left usually to the judgment of the master.

Mr. Laws: We will offer the affidavit, the one which accompanied the proofs of loss, and which we referred to yesterday, which I have exhibited to Mr. Masten.

The Court: We will have that marked Exhibit 15.

Affidavit above referred to was then marked Exhibit 15.

LEONARD W. ROBERTS, after being duly sworn by the clerk on behalf of the claimant, testified as follows:

Examined.

By Mr. Laws:

Q. Where do you reside?

A. Conneaut, Ohio.

Q. What is your business?

A. Dock foreman.

Q. For whom?

A. The Pittsburg & Conneaut Dock Company.

The Court: Is the affidavit considered in evidence?

73 Mr. Masten: Mr. Morris testified there was an affidavit from Mr. Franscombe.

The Court: There is no objection to that?

Mr. Masten: No, your Honor.

The Court: Is there anything in there in which they claim anything as to how the loss occurred?

Mr. Masten: I have not read it.

Mr. Laws: No, your Honor. There is not anything in there.

Mr. Canfield: It is in the form of a protest.

Mr. Laws: Mr. Franscombe protests and says the vessel was lost on a certain date from peril of the sea.

The Court: Will I get anything more on that branch of the case before I am through?

Mr. Masten: Probably a great deal.

By Mr. Laws (continuing):

Q. How long have you been in that position, Mr. Roberts?

A. 15 years.

Q. In your position as dock foreman, what do you do?

A. Load coal and steel rails.

Q. During the course of 15 years have you loaded many or few vessels with steel rails?

A. Many.

Q. Can you form a rough guess at how many, how many a season?

A. There was about 5 years I worked at nothing else, steady.

Q. You also loaded what else, did you say?

A. Coal.

Q. Do you discharge vessels there?

A. Yes, sir.

Q. What do they carry into port?

A. Iron ore.

Q. Carry iron ore in there?

A. Yes, sir.

Q. Did you have to do, Mr. Roberts, with the loading of the Steamer Benjamin Noble in April, 1914, about the 18th?

A. Yes, sir.

Q. The 16th, 17th and 18th?

A. Yes, sir.

Q. Tell his Honor what you had to do with that?

A. Well, I had to load him down, put as many rails on as the captain wanted, and see the number of rails that was in each car, and drop them in there, to see it was properly loaded in the boat.

74 Q. Do you happen to remember how many cars went on the boat?

A. Yes, sir.

Q. How many?

A. 60.

The Court: Sixty?

A. Yes, sir.

Q. Did you have any conversation with the captain during the process of loading, regarding the load that was to go on the boat?

Mr. Masten: I object to that.

A. Yes, sir.

The Court: The objection is overruled.

Q. Tell us and tell his Honor what your conversation was with the captain on that subject?

A. Well, we had on 55 cars, and he asked me, he said, are you going to get them all on? I said, I don't think so. Well, he said it looks as if she was not going to take them all, sure. He said what had I better do? I said you better go and call up your owners. He said you go ahead and put on two more—no, he went over and then came back and told me to put on two more. He said what is their marks? I said I have not looked. I went and looked at his marks, me and him, and he said I don't know whether she can take them all. I said it is up to you; whatever you say, all right. He said what had I better do? I said you better get your marks and call up your

owners. He went and called up the owners and came back and told me to put on two more, so I put on the other two, but before that he said now this is the first boat I ever had. He said if I don't take all they tell me to take, it looks as though I had cold feet. You go ahead and put on two more cars. He said those fellows told me to load it to my own judgment, but she has had on 3100—for me to load it to my own judgment. He said if I don't put it on they will think I have got cold feet; put on two more cars. So I put on two cars. I went and looked at her marks, and he said to me there is one car left? I said yes. Can I take half of that in No. 1, and the other back aft? I said it is up to you; if you want it there I will put it there. He went and got the chief engineer, and both of them went and looked at the marks and came back and told me I had enough; we can't take any more.

Q. I understand when he came back, apparently from telephoning to the owners she had taken on 3100 tons before?

A. Yes, sir.

75 Mr. Masten: If your Honor please, I want some general exception to that conversation, especially to this question, because he assumes the owners did say something. This man does not know that.

The Court: I did not understand he had said that.

Mr. Masten: He said the captain told him he had that much.

Mr. Laws: He said the captain said the owners had said—

Mr. Masten: No.

The Court: I will ask him. I do not want you to be confused by anything that has been said. I will ask you now to repeat all that the captain said to you when he came back. Take your time about it, and do not let anything that any of us has said confuse you about it in any way.

A. When he came back the second time?

The Court: Yes.

A. He said Mike—

The Court: Was this—did you have two conversations with him that you are telling us about on the day you finished the loading?

A. Yes, sir.

The Court: And you have told us about both of them?

A. Yes, sir.

Q. Well now I will ask you to divide it and tell us what he said in the first conversation, your conversation with him. Take your time, and get at it as near as you can the way it was?

A. He came back the first time and told me, he said the owners tells me she has had on 3100 tons but use your own judgment; put on two more cars.

Q. I want you to divide it and tell us first what it was the owners said, what he said the owners had said?

A. On the second time?

Q. The first time. What was it he said that the owners had said?

A. That she has had on 3100 tons; to load her to your own judgment.

Q. They told him that?

A. Yes, sir.

Q. All right. Was there anything more he told you in that conversation that he said the owners had told him?

A. Not at that time, no, sir.

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Q. Well, I won't ask you to repeat your conversation with reference to that because you have done it. In the second conversation did he tell you anything the owners had said?

A. Yes, sir.

Q. What did he say about that?

A. He told me the owners told him she has had on—he said they told me again she has had on 3100 tons, but to load her to your own judgment.

Q. Was there anything else he told you about his conversation with the owners?

A. Nothing with the owners.

The Court: I interrupt you, Mr. Laws, to avoid that objection.

Mr. Laws: There is no objection at all, sir.

By Mr. Laws (continuing):

Q. Did you see the marks of the boat after she had that cargo on board, Mr. Roberts?

A. Yes, sir.

Q. And what were her marks after she had that cargo on board?

A. I don't remember.

Q. You don't remember?

A. No, sir.

Q. Did you see her marks at any time while she was loading, toward the end of the loading?

A. Yes, sir.

Q. Tell us what marks you saw then?

A. 17-10 aft.

Q. And was that before she had all of the cargo on?

A. That I can't tell, I don't know whether I put on more after that or not. I don't remember.

Q. You don't remember that?

A. No, sir.

Q. Now tell us how this cargo was stowed, will you please, how it was stowed in the ship?

A. It was put in lengthways on the boat, work ways, until we got clear across the bottom of the boat; then we locked those in, and that leaves a space in there. We locked them in and made it solid. We break the joints. We went forward first three foot, and the next tier backed up three foot. We done that through the whole loading. Broke the joint 3 foot.

Q. What was the purpose of breaking the joints?

A. The mates claimed they won't shift if they are that way; they are solidier.

Q. When the cargo was entirely in place whether or not it was securely in the boat?

A. Yes, it was.

Q. Was it loaded in the customary or different way from the usual way?

A. Customary.

Q. I understand you to say you have loaded a great many cargoes of steel rails?

A. Yes, sir.

77 Q. Did the stevedores have anything to do with putting the hatches on this boat?

A. No, sir, we had nothing to do with that whatever.

Q. They were attended to by whom, the putting on of the hatches?

A. The mate.

Q. Of the ship?

A. Yes, sir.

Q. Who determined the amount of cargo that went on the boat?

A. The captain.

Q. Did you have anything to do with determining the amount that went on the boat?

A. No, sir.

Q. Did you see this boat when she left the harbor after she was loaded?

A. Yes, sir.

Q. How long had you been on her before she left the harbor, before she started, about how long, I mean?

A. How long was I working on her?

Q. No. Just before she left, how long had you been on her?

A. About half an hour.

Q. Did you notice what freeboard she had when she left the harbor, just before she left the harbor?

A. Yes, sir.

Q. Tell his Honor and tell us what freeboard she had after she was loaded and ready to sail?

A. I should think about 2 inches.

Q. What if anything did you do in connection with determining the freeboard on board of the boat if anything?

A. I went to the after scupper hole and put my finger and thumb like this (showing) put my thumb on top of the deck, and my finger touched water.

Q. How about the freeboard on this boat as she left the harbor, compared with the freeboard on other boats loaded with steel rails that you have seen leaving that harbor, as to the quantity of freeboard she had?

A. She did not have as much as any I have seen go out.

Q. What is the usual amount of freeboard that boats have leaving the harbor loaded with steel rails or other cargoes in your experience?

A. I have seen them from one foot to three foot, different boats.

Q. Did you ever see a boat loaded as deeply as this one leaving the harbor for a voyage?

A. No, sir.

Q. Did you ever see a boat come in loaded as deeply as this one?

A. No, sir.

Q. These conversations that you refer to, please tell us whether they occurred on the same day or different days, these two conversations?

A. On the same day.

Q. Occurred on the same day?

A. Yes, sir.

Q. And about how far apart did they occur?

A. About one hour.

Q. About one hour?

A. Yes.

78 Q. And what day was that with respect to the time when she was finally loaded, do you remember?

A. How is that?

Q. What day was it with respect to her being finally loaded, that they took place?

A. It was on Saturday.

Q. That was on Saturday. Was that the last day she was loaded or some prior day?

A. That is the last day she was loaded.

Q. That is the last day anything was put on her?

A. Yes, sir.

Q. Did you hear any comment by the men about the harbor with respect to this boat when she was loaded?

Mr. Masten: We object to that.

A. Yes, sir.

The Court: That answer may stand.

Mr. Laws: I was going to push it a little farther, but I will not do so.

Cross-examination.

By Mr. Leckie:

Q. How long did you say you had been there, Mr. Roberts?

A. 16 years.

Q. What other boats have you loaded there with rails?

A. The Beattie, the Spaulding, the Fisher, the Fred Kelley, the Adriatic.

Q. The Beattie, the Spaulding and Fisher are a good deal the same type of boat as the Noble?

A. Yes, sir.

Q. And are those the boats that you refer to, when they are loaded, as having a couple of feet freeboard?

A. No, sir.

Q. What boat was it that you referred to that had a couple of feet freeboard?

A. The Fred Kelly and the Adriatic.

Q. They are both wooden boats?

A. Yes, sir, and the Republic.

Q. The Republic?

A. Yes, sir.

Q. Is that the steel Republic?

A. Yes, sir.

Q. Did she ever load rails?

A. No, sir.

Q. She is a double decked boat?

A. Yes, sir.

Q. And those boats of course are no comparison to this type of boat?

A. No, sir.

The Court: This boat has not been described at all on the record.

79 Q. The Noble is what is known as a single decked boat, is she not?

A. Yes, sir.

Q. The boats you saw coming in there loaded are mostly iron ore carriers?

A. Yes, sir. I have seen the Spaulding come in there also.

Q. I say mostly the ones you saw coming in there are the big fellows?

A. Yes, sir.

Q. And their freeboard has no relation to this matter?

A. No, sir.

Q. Now the Beattie, the Spaulding and the Fisher are they the ones that you referred to as going out of there with about one foot freeboard, with rails?

A. About one foot, yes.

Q. The expression that you used about the captain, when he came back was "them fellers had told him to use his own judgment"—

Mr. Laws: Just a moment. He did not use that expression at all. He said the owners.

Q. Did you use that expression at any time, do you remember?

A. What expression is that?

Q. When the captain came back he said something—they fellers told him to use his own judgment.

A. He said the owners.

Q. All you know about that he went off for a talk and talked with somebody apparently on the telephone?

A. Yes, sir.

Q. You do not know whom he talked to?

A. No, sir.

Q. Do you recollect about what time of the day that was that he went and talked and came back, after apparently having had a talk with somebody?

A. I don't know exactly the time, but it was along about 10:30.

Q. At all times during the course of the loading there, the different

conversations the captain did have with you, it was always to the effect he was to use his own judgment?

A. Yes, sir.

Q. And he did use his own judgment?

A. He did.

Q. Now the time you speak of, when you put your finger down in the scupper, she had full fueling on, I suppose?

A. Yes, sir.

Q. You don't know anything about what water was in her or anything of that sort?

A. In the boat.

Q. Yes.

A. No water in the boat.

Q. How do you know?

A. He was trying the water.

80 Q. Who was trying the water?

A. The watchman. I went to him and asked him whether there was any water in her and he said no. I said I want to be sure because I want to get two lifts out of the last car. He came to me and said she is dry.

Q. This 17-10 that you saw aft, was that forenoon shortly before she left?

A. Well I can't tell when it was. It was between five cars and the last one. I don't remember when it was.

Q. The last one you put in, was that a full car?

A. Yes, sir.

Q. And the balance that was left on the dock, you would have given him that if he had asked for it?

A. Yes, sir.

Q. You have never sailed yourself, I take it?

A. No, sir.

Q. That is all.

Mr. Laws: That is all, Mr. Roberts.

LEVERETT W. GOLDSMITH, after being duly sworn by the court on behalf of the claimants, testified as follows:

Examined.

By Mr. Laws:

Q. Mr. Goldsmith, what is your business?

A. General labor foreman for the Pittsburg & Conneaut Dock Company.

Q. At what point?

A. Conneaut, Ohio.

Q. How long have you held that position there?

A. That position, three years.

Q. How long have you worked on the docks of the Pittsburg & Conneaut Dock Company at Conneaut?

A. 17 years.

Q. Do you have anything to do with the loading and discharging of vessels at that dock?

A. Yes, sir, that comes in under my work.

Q. Did you have anything to do with the coaling of vessels that wished to be coaled there?

A. Yes, sir. I take the orders.

Q. Did you have anything to do with the loading of the Steamer Benjamin Noble about April 16, 17 and 18, 1914?

A. Yes, I was—it was coming under my department.

Q. Tell his Honor what you had to do with that, sir.

81 A. I had to oversee the work, and see that she was loaded properly, and see to the hiring of the men.

Q. You had how many cars of rails to put on her at that time?

A. 60 cars I believe.

Q. Please tell us who determined the quantity of rails that went on the steamer?

A. Why the captain.

Q. Did you or any of the other stevedores have anything to do with determining that quantity?

A. No, sir.

Q. Tell us how the rails were stowed in the ship, please.

A. They were placed fore and aft and balled up from the keels on over to the wing, the first layer; then they are doubled up and locked, making a level floor, the first tier.

The Court: How long are the rails?

A. 32 feet. Then we break the joints; I think every tier or every tier on that boat, three or four feet. That is, we run a second tier ahead four feet, in order to make them good and secure.

The Court: How many tiers were in there?

A. Four of them. I think that is what we had, four lengths.

The Court: What is the length of this ship?

A. I think 239 or 240 feet.

Mr. Hill: 239 keel.

By Mr. Laws (continuing):

Q. That process was continued until after the boat was loaded, was it, the process of locking the rails and breaking the joints?

A. Yes, sir.

Q. Why do you break the joints? What is the object of that?

A. To make the cargo solid in her.

Q. When she was finally loaded please tell his Honor whether or not that cargo was solidly loaded into the ship?

A. Yes, sir.

Q. Was it loaded in the customary or usual manner or a different manner?

A. The customary manner.

Q. How many cargoes have you had of steel rails to load, about?

A. That would be hard to say; a good many of them.

Q. A great many of them?

A. Yes, sir.

Q. And about how many a season would you say?

A. Well that would be pretty hard to say; the last few years we have not loaded as many as we used to. Probably an average of ten or fifteen, something like that, for the season.

82 Q. For a season?

A. Yes, sir, in late years.

Q. Of late years?

A. Yes, sir.

Q. Were there more than that or less than that during previous seasons?

A. More; we used to load more.

Q. And you have loaded quite a good many cargoes of steel rails on ships?

A. Yes, sir, many of them.

Q. Did you have any conversation with the captain of this boat at any time during the process of loading?

A. Yes, sir.

Q. Please tell his Honor what that conversation was?

A. Well I had different conversations; I can not tell all of them.

Q. Give us your best recollection of any of them that you had.

The Court: And fix the time.

Mr. Masten: I would like the same objection which we made to the other witness.

The Court: That is just the general objection, I understand, that you make.

Mr. Masten: Yes.

The Court: The objection is overruled.

Q. Now will you tell his Honor——

The Court: Fix the time and place and who was present as near as you can at each conversation?

A. Well the captain asked me whether we had ever loaded the boat there before. We talked about the amount and the size of the cargo, and he wanted me—he asked me whether we had ever loaded her before, and I told him we had. He wanted to know what her draft was, how much we put on. I could not tell him. He asked me whether I would go to the office and look it up and I told him I would. I did that. That was two or three years before that, I can not just remember when. Then later, along at the end of——

The Court: State what you found out and what you told him?

A. Well, I found out she had put 2800 tons on, somewhere close to that on the trip before, that she was loaded there, but I did not get her draft for him because they did not have that.

83 The Court: Did you tell him that?

A. Yes, sir. Well then, when we got towards the end of the loading, I think there were three or four cars to go on, and I asked him whether he thought he could take all of it. I wanted to find it out. He said he could not tell me for sure. He said he would let me know later. He went to the telephone and called up his manager and came back and said he did not think he could take all of that. Then when we go down to the last car—we had

two cars left, and I asked him again—I told him I did not want to start a car unless we could put it all on; we could not split it. That was just before, before we got to that car, probably 15 or 20 minutes, and he went and called up his managers again. He came back and he said he would take that car, and that is all he would take. Except about the fuel that is all the conversation I think.

Q. Mr. Goldsmith, did you see the draft of this boat after she was loaded?

A. Yes, sir.

Q. Tell us what she drew after she was loaded?

A. As near as I can remember she was about 18-3 or 4 aft and 17-10, I believe, forward; something like that, pretty close to it.

The Court: 18-3?

A. Aft.

The Court: And forward?

A. About 17-9 or 10. I could not say exactly.

By Mr. Laws (continuing):

Q. Have you seen boats coming in and out of Conneaut Harbor during your experience there?

A. Yes, sir.

Q. How did the freeboard that this Noble had, on this occasion when she was loaded, and ready for sea, compare with the freeboard of the other boats that you have seen coming in and going out of the harbor at Conneaut in your experience of some 12 years?

A. Well, she was the deepest of any boat I can ever remember of seeing going out of there, that is for the style of boat.

Q. For that style of boat?

A. Yes, sir.

Q. What is the usual freeboard that you have seen on other boats of the same style going in and out of that harbor loaded?

A. Of that same style, do you say?

Q. Yes, that same style.

A. Well usually a foot; something like that.

Q. Usually a foot?

A. Yes, sir.

84 Q. And what boats do you refer to of that style, that you have in mind, that you have seen with one foot of freeboard?

A. Well a good many. The Spaulding, the Charles Neff, I think, and the Beattie.

Q. Any others that you happen to recall just now?

A. And the Fisher.

Q. Did you have anything to do—do you know whether any fuel was put on this boat for this voyage?

A. Yes, sir.

Q. How much coal was put on her?

A. About 160 tons.

Q. About 160 tons?

A. Yes, sir.

Q. How much freeboard did this boat have when she left the dock on this voyage?

A. An inch and a half or two inches.

Q. Where was this coal put; was it all put below or any of it on the deck, this fuel coal?

A. It was put in her coal bunkers.

Q. It was put in her coal bunkers?

A. Yes, sir.

Q. And were they on deck or below?

A. They are back aft on her.

Q. They are aft?

A. Yes, sir.

By the Court:

Q. When was the coal put on?

A. That was put on when she was somewhere about half loaded. I can't say for sure but it was—probably had eight or ten cars to go on, maybe more.

Q. Mr. Roberts used the word, the term, "workways" in connection with these rails. What does that mean?

A. Fore and aft, the way we run the rails in. I believe.

Q. Did it mean lengthwise of the ship?

A. Yes, sir.

Q. He spoke of their being locked in; what is meant by that?

A. Dumped—we set up one tier, do you see, and ball it, and that leaves an opening between each rail.

Q. What do you mean, balling?

A. Ball the rail up, just the way they are locked on the railroad track; then the next tier we dump those right in, and it makes a double tier, do you see, and makes them all solid together.

Mr. Laws:

Q. I want to ask you one more question.

By Mr. Laws (continuing):

Q. Did the stevedores have anything to do, and did you have anything to do—did the stevedores have anything to do with the putting on of the hatches?

A. No, sir.

85

Q. Who was that attended to by?

A. That goes with the boat crew—the mate, the second mate.

Q. The boat crew?

A. Yes, sir.

Q. That is all. Cross-examine.

Cross-examination.

By Mr. Canfield:

Q. I did not understand, Mr. Goldsmith, what your connection with this loading is?

A. Well I am the general labor foreman, and that comes under my work.

Q. You are employed by whom?

A. The Pittsburgh & Conneaut Dock Company.

Q. The Pittsburgh & Conneaut Dock Company had to load this boat?

A. Yes, sir.

Q. And do you recall when you received your instructions regarding the loading?

A. Away ahead; along in February or March the superintendent told me we would have this boat there early, and to get our rig ready to load her with.

Q. And what quantity did he tell you?

A. What quantity?

Q. Yes.

A. He didn't tell me at that time.

Q. He did not tell you?

A. No, sir.

Q. When did you learn the quantity?

A. I could not say for sure; it was probably two or three days, maybe a week, the rails came in there before the boat got there.

Q. They came in on the cars?

A. Yes, sir.

Q. What kind of cars are they?

A. Gondolas.

Q. How were the rails transferred from the car to the boat?

A. With a whirler.

Q. Do they use any magnet system there?

A. No, sir.

Q. And where were you while the loading went on?

A. I was around the dock; I was there at that dock a part of the time.

Q. In and out attending to other matters?

A. Yes, sir, some other matters, but not much at that time of the year.

Q. You met the captain several times?

A. Yes, sir.

Q. And he asked you whether you had ever loaded that boat before?

A. Yes, sir.

Q. You told him yes?

A. Yes, sir.

Q. And then went up to the office and told him what draft you used to load her?

A. Yes, sir. He asked me to get her draft.

86 Q. And you went up and got the information?

A. I did.

Q. Brought it back to him?

A. Yes, sir.

Q. Do you recall about what time of the day he telephoned his managers, as you said?

A. No, I can't tell.

Q. Were you there when he telephoned?

A. He went over to the supply store, the Great Lakes—the Pittsburg Steamship store.

Q. You were not there when he telephoned?

A. No, sir.

Q. Do you know whether he telephoned Cleveland?

A. Yes, he did, I think.

Q. Telephoned Cleveland. Did he say with whom he talked up there?

A. Hanna & Company, I believe, the managers.

Q. Hanna & Company?

A. Yes, sir.

Q. He came back and asked you to put on other cars?

A. Yes, and we put on some.

Q. And if the captain had asked for that other car, whether or not you would have given it to him?

A. I don't understand.

Q. If the captain had asked for that last car, whether or not you would have given it to him?

A. Yes, we would have given it to him.

Q. The entire matter of the quantity of the cargo was left to the captain's judgment?

A. Yes, sir.

Q. You are familiar with the Beattie, the Spalding, the Fisher and Neff boats?

A. Yes, sir.

Q. They are boats of about the type of the Noble?

A. About that type, yes, I believe.

Q. And how frequently had they come in there for loading by you?

A. Well they used to come there and trade there pretty regularly, four or five years ago.

Q. You have loaded them a good many times?

A. I have, yes.

Q. Had you usually observed their freeboard going out?

A. It was my business at that time to pay pretty close attention to that, to their marks.

Q. To the freeboard?

A. Yes, sir.

Q. Will you give us the usual freeboard of the Beattie?

A. Somewhere around a foot I think as near as I can remember.

Q. As near as you can remember?

A. Yes, sir.

Q. At what point in the ship did you estimate her freeboard?

A. Back at the after hatch, the after scupper, you can usually see there—

87 Q. How many scuppers did she have?

A. I cannot say.

Q. Back of the after hatch?

A. Yes, near there.

Q. What was her draft forward at that time?

A. What was her draft forward?

Q. Yes.

A. I can't remember that. I have not loaded her in a long time.

Q. You had not loaded her very long at the time you estimated her freeboard?

Mr. Hill: He said he had not loaded her in a long time.

Q. You don't remember her draft?

A. She used to load, I believe, about 17 feet; something like that.

Q. She would load about 17 feet?

A. I can't say for sure, but as near as I can remember; it has been quite a while since I loaded her there.

Q. How about the Neff. What freeboard would you observe on her?

A. It has been a long time since we loaded the Neff and I cannot remember.

Q. You don't remember that. How about the Spalding?

A. Well she loads about the same as the Beattie and carries about the same I think.

Q. How much freeboard did she habitually have when leaving?

A. I think about one foot, of late years, anyway.

Q. How much?

A. About one foot, yes.

Q. Of late years?

A. Yes, sir.

Q. What was the draft forward?

A. She used to load deeper than that.

Q. She used to load deeper than that?

A. The Spalding did.

Q. She used to load decks to?

A. No, I don't remember she used to load decks to.

Q. How about the Beattie?

A. I can't remember.

Q. Once in a while she would be decks to?

Mr. Hill: What do you mean by loads decks to, loading on decks, Mr. Canfield?

A. I can't remember any other of those boats loading decks to.

Q. You can't remember?

A. I know they never did, not me loading them; I know I never loaded them that way.

Q. I do not say that you did. How about their draft when they left?

A. Which one?

Q. We will take the Spalding.

88 The Court: How do you spell that "decks to"?

Mr. Canfield: Decks, d-e-c-k-s, to, t-o.

By Mr. Canfield (continuing):

Q. How about the draft of the Spalding?

A. I can't remember just exactly what her draft would be; somewhere around 17 feet I think.

Q. How much cargo would you load on the Spalding?

A. About 1800 tons.

Q. How much on the Beattie?

A. About the same probably.

Q. And the Neff?

A. Well I can't remember her. I think she was a larger boat.

Q. Do you recall how much cargo you loaded on her at any particular time?

A. No, sir, I can't.

Q. Do you know how much cargo you loaded on the Spalding when she had about one foot freeboard left?

A. About 1800 tons, I would think, somewhere near there.

Q. That is your best recollection?

A. Yes, sir.

Redirect examination.

By Mr. Laws:

Q. Just one question. I understand you to say the captain told you that he had called up the managers. Is that correct, his managers?

A. Yes, sir.

Q. His managers?

A. He said he would go and call them up.

Q. He did not tell you who the managers were, did he?

A. I knew myself, I guess, Mitchell or Panama Company.

Q. Which was it now?

A. Now I am stalled there; I can't tell which one. It was one or the other I think.

Q. One or the other. That is what I thought. You don't remember which one he said he called up?

A. I think it was Mitchell.

Q. You think it was Mitchell?

A. Yes, sir. It was Mitchell I am pretty sure.

Recross-examination.

By Mr. Canfield:

Q. Did he tell you so?

A. No, he did not.

Q. Then how do you know?

A. Because I knew they are his managers.

89 Q. Because you knew they were his managers?

A. Yes, sir, managed that boat.

Q. And that is the reason you testified he called them up?

A. No. He told me the — was going to call up his managers.

Q. But did not mention any names?

A. Sir?

Q. He did not mention any names?

A. Well I can't remember that he did.

Q. You can not remember?

A. He said he was going to call up his managers.

Q. And you understood that Mitchell & Co. were his managers?

A. Yes, sir.

Q. Who told you that?

A. I do not know whether he did—I guess I knew it myself. I had been around that business quite a lot.

Q. You had transacted business relating to the Noble with Mitchell & Co.

A. No, sir, not particularly.

Q. That is all.

Examined.

By the Court:

Q. You say the rails were loaded by a whirler?

A. Yes, sir.

Q. Tell me a little more about that?

A. Well that is a crane with a boom.

Q. A crane picks the rail off the car and swings it onto the boat?

A. Yes, sir. They are put up in bunches in the car. We have a rig, a fling——

Q. The tracks come in close enough so they can pick the rail off the gondola?

A. Yes, sir, and whirl them into the boat.

Q. And lower them into the boat?

A. Yes, sir.

Q. This expression "decks to" what is that?

A. The way I understand, that means, if her decks, the spar deck was level with the water.

Q. That is all.

GUY A. KLUMPH, after being duly sworn by the court of behalf of the claimant, testified as follows:

Examined.

By Mr. Laws:

Q. Where do you live, Mr. Klumph?

A. Conneaut, Ohio.

Q. What is your business?

A. Machine foreman for the Pittsburg & Conneaut Dock Company.

90 Q. And how long have you been there, Mr. Klumph?

A. I have been foreman there about 12 years.

Q. Did you see the Benjamin Noble on April 18th, 1914, at Conneaut, Ohio?

A. I beg your pardon.

Mr. Laws: He is a little hard of hearing. I had better go up near him.

By Mr. Laws (continuing):

Q. Did you see the Benjamin Noble on April 18th, 1914, at Conneaut, Ohio?

A. Yes, sir.

Q. Was she loaded or light at that time?

A. Loaded.

Q. Did you notice anything unusual about this vessel at that time?

A. Well I noticed she had a pretty heavy load in her; loaded down deep in the water.

Objected to; objection overruled.

Q. During the time that you have been there have you seen other vessels loaded coming in and going out at that dock. During the time that you have been there have you seen other vessels which were loaded coming in and going out of the dock?

A. Yes, sir.

Q. And how did this boat, as far as her draft was concerned, compare with other boats which you have seen coming in and going out, the same type of boat?

A. As far as her draft was concerned, other boats might have more draft, but as far as being loaded, she was in the water—her decks relative to the surface of the water, I do not think I ever saw a boat coming in or going out that was loaded down as deeply.

Q. How much freeboard did she have, if any?

A. Well, I estimate probably 3 or 4 inches. I did not measure it. I guessed with my eye.

Q. Did you take a photograph of that boat after she was loaded as she was going out of the dock?

A. Yes, sir.

Q. Look at that film and see whether or not that is the film that you took, the photograph that you took of her?

A. Yes, I took that.

The Court: You can mark the picture; you can not mark the film. Call it Exhibit 16.

(Photograph above referred to was then marked Exhibit 16.)

Mr. Laws: I think we have an enlargement which this man made. It may help some.

91 By Mr. Laws (continuing):

Q. Who made that enlargement (showing enlargement to witness)?

A. I think I did. I made some like it anyway. I think I made that.

(Enlargement was then marked Exhibit 17.)

Mr. Laws: I will offer the photograph Exhibit 16 and 17 in evidence.

The Court: Is there any objection?

Mr. Masten: No, your Honor.

The Court: They will be received.

By Mr. Laws (continuing):

Q. When was this photograph taken?

A. They were taken as she was backing out, turning around in the basin.

Q. At Conneaut?

A. Yes, sir, when she went out.

Q. On April 18th, 1914?

A. Yes, sir.

Cross-examination.

By Mr. Canfield:

Q. What sort of a camera did you use?

A. A vest pocket kodak.

Q. How far were you standing from the boat?

A. Probably about 300 feet; 250 or 300 feet.

Q. How did you remember the day?

A. Well I remember the day.

Q. How did you remember the date?

A. Well I remember the date—I don't remember—I don't know as I could swear, but it was the last day she was in there, when she went out with the last load of rails.

Q. You frequently take pictures of boats?

A. Yes, sir, often.

Q. Is that a part of your business?

A. No, sir, just merely for pleasure.

Q. Just for pleasure?

A. Yes, sir.

Q. And you developed this yourself?

A. Yes, sir.

Q. Now you were standing where?

A. I was standing on the end of No. 2 dock.

Q. And the boat was backing around?

A. Yes, sir, I will show you on the small one.

Q. Take that one.

92 A. I was standing about in the position like this. The boat backed down, and I was on No. 2 dock. I stood on the end of the dock, and the vessel backed down and backed around in that position and started ahead again.

Q. Got away without any trouble, didn't she?

A. I didn't notice her having trouble getting away.

Q. And did not see any trouble at all?

A. No, sir.

Q. She was backing at the time you took this picture?

A. I think she was going ahead at the time I took the picture; going ahead slowly.

Q. Substantially you took this picture from a point when you were looking at the boat rather head on?

A. Just as the picture shows.

Q. There the bow is nearer the camera, is it not?

A. Yes, sir.

Q. Than the stern?

A. A very little bit nearer.

Q. The stern angles off into the perspective?

A. It is not very much. I tried to get it as near broadside as I could, but I see she was not coming far enough ahead, the car ferry laying here. It is not exactly square.

Q. That is shown by the fact that the after house is not brought full view?

A. It is not exactly square.

By Mr. Laws:

Q. Did you notice the freeboard—did you notice the draft of this vessel when she left?

A. I did not notice the draft. I didn't pay any attention to it.

Q. That is all, Mr. Klumph.

MIKE FRAUK, after being duly sworn by the court on behalf of the claimant, testified as follows:

Examined.

By Mr. Laws:

Q. Where do you live, Mr. Frauk?

A. Conneaut, Ohio.

Q. What is your business?

A. Operating the whirly, the steam shovel; repair work; all around the machineries.

Q. Around the machinery?

A. Yes, sir.

Q. At what point, at what place?

A. Conneaut, on the dock.

Q. How long have you been there?

A. 19 years.

Q. Does your work take you around the docks of the Conneaut Dock Company?

A. Yes, sir.

Q. Did you have anything to do with the loading of the Benjamin Noble on April 16, 17 and 18, 1914?

A. I operate the whirlies and put on the boat, yes.

Q. Do you know who determined the amount of steel rails that were to go on the boat, who decided that?

A. Why, the foreman took and gave me orders to work it.

Q. He gave you orders to work it?

A. Yes sir.

Q. Did you see this boat when she left the dock?

A. Yes, sir.

Q. Did you see her draft?

A. Yes.

Q. Tell us what her draft was when she left the dock loaded?

A. Why she had 18 feet aft and she had 17, 7, forward, if I just remember right.

Q. How much freeboard did she have, if any?

A. I don't know. She had only about 3 inches—not very much.

Q. Have you seen other boats come in and out of that dock loaded?

A. Yes, a lot of them.

Q. A good many of them, have you?

A. Yes, lots of them.

Q. Loaded with steel rails?

A. Yes.

Q. Have you seen other boats of about the same type as the Noble?

A. No, sir.

Q. What boats have you seen?

A. Well I could not remember all of them because we loaded too many of them. I have been loading since we started to load steel rails. I know the Beattie and the Spalding. I worked them a good many times.

Q. A great many times?

A. Yes, sir.

Q. Are they not about the same type of boat as the Noble?

A. Why, the Beattie boat—they don't carry I think as much.

Q. Do not carry as much but about the same model?

A. About the same I should think, I guess.

Q. How much freeboard did these boats that you have seen there, the boats going out, ordinarily have, loaded?

A. I could not remember very well because it was quite a long time since we loaded those boats. They had over a foot anyway.

Q. Over a foot anyway?

A. Yes.

Q. How did the freeboard of the Noble compare with any other boat that you have seen going out of there loaded or coming in loaded?

A. She was too low.

Q. That is all.

No cross examination.

94 WENDELL HOWARD, after being duly sworn by the court on behalf of the claimant testified as follows:

Examined.

By Mr. Laws:

Q. Mr. Howard, where do you live?

A. Conneaut, Ohio.

Q. What is your business?

A. Machine foreman.

Q. And for whom do you work, Mr. Howard?

A. The Pittsburg & Conneaut Dock Company.

Q. How long have you lived there or worked there?

A. About 16 years.

Q. What do you do. What is your duty there?

A. I have the machines to take care of and keep running, the men to look after, who operate them.

Q. That is the loading and discharging machines?

A. Yes, sir.

Q. Did you see the Benjamin Noble when she left Conneaut, Ohio on April 18th, 1914?

A. Yes, sir.

Q. Did you notice how much freeboard she had at that time?

A. I could not tell you exactly; that is not my line of business, but I know she was loaded deep.

Q. Have you seen other boats coming in and out of there which were loaded?

A. Yes, sir.

Q. With steel rails?

A. Yes, sir.

Q. What is the usual amount of freeboard that boats have, as far as coming in and going out of there have, when loaded?

A. Why I seen them loaded pretty deep there, but I didn't notice particularly—I do not think I ever see one go out without a foot or two and a half.

Q. From one foot to two and a half?

A. Yes, sir.

Q. Did you ever see a boat coming in or going out loaded as deeply as the Noble was on this particular occasion?

A. Not at that time of year.

Q. Not at that time of year. Can you tell us what freeboard the Noble had on this occasion, if any?

A. I am telling you I did not pay very much attention to that; that is not my business. I noticed she was loaded deep. If I should judge I would say from 2 to 5 inches, something like that,—1 to 5.

That is outside of my business.

Cross-examination.

By Mr. Leckie:

Q. You have never sailed?

A. I have made a few trips, sir.

95

Q. How long ago?

A. That is a good many years; about 20 or 25.

Q. Never in this type of boat?

A. Well, no, sir, anything like that.

Q. I beg your pardon.

A. Nothing like the Noble, no.

Q. And the attention which you gave on this occasion was the mere casual attention of a passerby, was it?

A. How is that?

Q. I say the attention which you gave on this occasion was the mere attention of a passerby?

A. Yes, sir.

Q. And the boats that you have noticed with 2½ feet freeboard, were those boats with rails, loaded with rails?

A. Why, I am telling you that is not my business to look at that, the freeboard or anything of that kind, but I can tell when a boat is loaded deep or whether she looks good to me or not.

Q. You said you saw them from one foot to 2½?

A. I have seen the Spalding come in there loaded pretty deep. What she had on I could not tell you.

Q. I want to get at the boats that you have seen that were 2½?

A. Yes, sir.

Q. They were not this type of boat, were they?

A. I expect not. I would not argue with you on that.

Q. And the Spalding and the Beattie and the Neff, the single deck type of boats, you have seen frequently loaded right down close to the water?

A. I have seen them loaded deep, yes.

Q. That is all.

By the Court:

Q. This whirler, in carrying the rails, carries just one rail at a time?

A. No. It varies from 3 to 12, according to the size of the machine.

Q. How does it get hold of the rails to carry several at one time?

A. Well, to take 12 rails, we have a box that takes them in, with a cable that goes about 4 feet of the other end, with a sling around it. When we are loading from 1 to 3, we have tongs that grip on to the rails.

Q. Grips on and carries them, lowers them clear into the hold of the ship?

A. Yes, sir.

Q. And how are they moved in the bottom?

A. They are usually run on rollers.

Q. That is all.

96 STEVE KOASE, after being duly sworn by the court on behalf of the claimant testified as follows:

Examined.

By Mr. Laws:

Q. Mr. Koase, where do you live?

A. Conneaut, Ohio.

Q. What is your business?

A. Laborer.

- Q. For what company?
 A. The Pittsburg Steamship Company.
 Q. How long have you lived in Conneaut?
 A. Five years.
 Q. What part of the town do you work in? Where does your work take you?
 A. I work on the docks.
 Q. On the docks?
 A. Yes, sir.
 Q. Did you see the Benjamin Noble on or about April 18th, 1914, in Conneaut, Ohio?
 A. Yes, sir.
 Q. Did you notice her freeboard at that time?
 A. I am working in the boat.
 Q. You were working in the boat?
 A. Yes, sir.
 Q. Did you notice how she was loaded?
 A. She was loaded too much, I see. I never saw those ties loaded on a boat like that.
 Q. Never saw a boat loaded down like that?
 A. No, sir.
 Q. Have you seen other boats coming in and out of Conneaut?
 A. Yes, sir.
 Q. Many or few?
 A. Many.
 Q. And have you seen them loaded with steel rails coming in and out?
 A. Yes, sir.
 Q. Did you ever see any boats that went out of there or came in loaded as deep as this boat was?
 A. No, sir.
 Q. About how much freeboard did the other boats have which were going in and out of there that you have seen?
 A. About one foot.
 Q. How much did this boat have when she went out loaded?
 A. About 2 or 3 inches.

Cross-examination.

By Mr. Canfield:

- Q. What are some of the other boats you have seen, Mr. Koase?
 A. What boat I see?
 Q. Yes. Give us the names of some of them.
 A. I don't remember them. I load too many boats at
 97 Conneaut. There is the Spalding. It is a long time I load
 at Conneaut, four or five years, and I see—I don't know the
 names.
 Q. Do you remember the Spalding?
 A. Yes, sir.
 Q. You worked on her?
 A. Yes.

Q. The Beattie?

A. The Beattie.

Q. You worked on her?

A. Yes.

Q. And seen them coming in and going out of Conneaut?

A. Yes.

Q. What is the freeboard of a boat?

A. I don't understand very well English. That is my trouble.

Q. But you told Mr. Laws here about the freeboard.

A. It is loaded down too much.

Q. The freeboard is when they are loaded down too much?

A. Yes.

Q. That is what you were talking to Mr. Laws about?

A. Yes.

Q. Now when you were working on the Noble, where did you work?

A. Yes.

Q. Where did you work?

A. I was working down in the hold.

Q. What were you doing there?

A. Loading.

Q. Stowing the rails?

A. Yes.

Q. You stowed the rails all right, did you?

A. Yes.

Q. Loaded the cargo in good shape?

A. Yes.

Q. And then you were through with your work?

A. Yes.

Q. Who told you when to quit?

A. The dock foreman.

Q. The dock foreman told you when to quit?

A. Yes.

Q. And you were through for the day?

A. Yes.

Q. And went off home?

A. Yes.

Q. That is right.

Mr. Laws: I just want to ask the witness one question.

By Mr. Laws:

Q. Did you see the boat as she left the harbor?

A. The harbor?

Q. Did you see her when she went out?

A. I don't see her when she went out. When we get finished, we go up on the dock and go home. I don't look back.

Q. Did you see her after she was loaded?

A. Yes, I seen when she was loaded.

Q. That is time you saw how much—how deep she was loaded? was it?

A. How deep?

98 Q. Yes. I say that was the time you saw she was deeply loaded?

A. Yes.

By Mr. Canfield:

Q. Where were you standing there when you saw it?

A. When I get finished?

Q. Yes.

A. I was going up on the dock.

Q. And you went up on the dock and went home, did you?

A. Yes.

Q. That is all.

The Court: We will take a five minute recess.

(Recess.)

ANDY FORSTI, after being duly sworn by the court on behalf of the claimant, testified as follows:

Examined.

By Mr. Laws:

Q. Your name is Andy Forsti?

A. Yes.

Q. Where do you live?

A. Conneaut Harbor, Ohio.

Q. How long have you lived there about?

A. I lived there about over 15 years.

Q. What do you work at up there?

A. Laborer.

Q. Do you have anything to do with the shipping there?

A. No.

Q. Is your work on the dock or away from the dock?

A. I work on the dock always.

Q. Have you seen ships coming in and going out of that harbor loaded?

A. Yes.

Q. While you have been there?

A. Yes, I see them.

Q. Did you see the Benjamin Noble go out in April, 1914? Did you see her go out?

A. I seen the stern. I don't see her go out on the lake, but I seen her stern after she was loaded.

Q. How was she loaded with respect to being light or deep?

A. Oh, I was look about the after hatch, just on the side, just a little bit deeper than——

Q. The water was a little bit deeper than the hole at the side?

A. Yes, on the water line, just a little bit; a couple of inches.

Q. Just a couple of inches?

A. Yes.

Q. I don't want to lead this man. Did you ever see any other boat loaded as deep as this, going in and out?

A. I never seen any.

99 Q. About how much deck side do the boats have when they go in and out loaded? How much between the decks and the water do they generally have?

A. The deck and the water?

Q. How much do other boats have usually?

A. Other boats?

Q. How much do other boats have between the deck and water, how much space, how much side?

A. I don't know.

Q. Do you know what freeboard means?

A. Another boat you say?

Q. Yes, other boats.

A. About one inch—about one foot or foot and a half another boat must have.

Q. About one foot or a foot and a half another boat must have?

A. Yes.

Cross-examination.

By Mr. Canfield:

Q. What is your nationality, Mr. Forsti?

A. What is that? I don't know what is that.

Q. Where did you come from before you came to this country?

A. Where I come from.

Q. Yes.

A. Old country, Finland.

Q. Do you understand English pretty well?

A. Not very good.

Q. Have you ever worked on boats?

A. No.

Q. Never sailed at all?

A. No, never sailed at all.

Q. What are you doing around the docks?

A. Only laboring, any kind of work.

Q. Any kind of work that comes in?

A. Yes.

Q. What were you doing on this day that you noticed the Noble?

A. I was working on the cars, hooking on the machine.

Q. In connection with this work?

A. Yes, the whirly.

Q. Had you gotten through your work and finished up the work?

A. Yes, I had finished up the work.

Q. You saw the stern of the Noble?

A. Yes, I seen that.

Q. You noticed her stern as she was going out?

A. Yes, just started.

Q. What did you do next?

A. I go home.

Q. You went home?

A. I go home. I finish that day and go home.

Q. Who told you to quit work?

A. The foreman.

Q. The dock foreman?

A. Yes, the dock foreman.

Q. What is his name?

A. That is Mike Roberts.

100 Q. He was one of the fellows who was bossing the loading?

A. Was he one of the bosses?

Q. Yes.

A. Yes.

Q. Who told you what freeboard was?

A. How is that? I don't know what is that, that freeboard.

Q. You do not understand what freeboard means, freeboard?

A. I don't know what that is.

Q. You do not know what that is?

A. I can't tell you no other name for that freeboard.

Q. Did you ever hear it called the side of the boat?

A. The side of the boat.

Q. What other boats have you seen down there, and noticed their side up about one foot or a foot and a half like that?

A. What boats were they? I don't know. I work on many boats. I don't know them. I work a long time but I don't know.

Q. You can not tell which ones they were?

A. No. I work on many; about 15 years I work on lots of them.

Q. And been on board lots of them?

A. Yes, I work lots of them.

Q. Can you tell us the names of any of them?

A. I don't know. Many. I can't tell you.

Q. Do you remember the Spalding?

A. I know that Spalding.

Q. What did you do in loading her?

A. I just work on the cars.

Q. You just work on the cars?

A. Yes.

Q. And don't have anything to do with the work on the boat?

A. No, sir, not on the boat; just on the cars. I work on the cars all of the time.

Q. And you don't have to pay very much attention to the boat, do you?

A. No, sir.

Q. Did you see that you noticed a little hole on the Noble?

A. Yes, where the water goes out on the decks.

Q. How big was the hole?

A. Just about like that (showing).

Q. About as big as a silver dollar?

A. Bigger than that.

Q. About as big as a coffee cup?

A. It is a hole on the deck for the water to run out.

Mr. Hill: The Scuppers.

By Mr. Canfield (continuing):

Q. That was the hole that you noticed?

A. Yes, by the after hatch.

101 Q. Which side of the boat was that?

A. This side, on the dock side.

Q. Near the stern?

A. I was picking up tools on the dock.

LAFAYETTE H. CONLEY, after being duly sworn by the court on behalf of the claimant, testified as follows:

Examined.

By Mr. Laws:

Q. Where do you live?

A. Sault Ste. Marie, Michigan.

Q. What is your business?

A. I work for the government, running the engine on the wall, opening and closing the gates.

Q. And what lock, which lock?

A. At the time the Benjamin Noble went through I was on the Poe lock; the north wall, the northeast corner.

Q. How long have you been working on the locks there?

A. A little better than 18 years.

Q. Have you noticed boats going through, passing to and fro during that time?

A. How is that again?

Q. I say you have seen boats going through there during that time frequently?

A. Yes, many of them.

Q. You saw the Benjamin Noble in the latter part of April, 1914?

A. I did.

Q. Do you remember the date you saw her?

A. About the 25th. I think it was the 25th. I am not sure. The latter part of April. One of the first boats.

Q. Was she upbound or downbound?

A. Bound up.

Q. How frequently had you seen the Noble before, would you say?

A. Well that is rather hard to estimate. Sometimes it will run two or three months and we won't lock a boat, then we will lock it about every time it locks for a month or two or better. Probably I think it would be safe to say that for five years I have locked the Benjamin Noble there about four times a year, but I could not state exactly.

Q. On occasions when you saw her was she loaded or light?

A. Loaded.

Q. And when you saw her on April 25, 1914, did you notice anything unusual about her?

A. Yes, sir.

Q. Please tell his Honor just exactly what you noticed on her that was unusual?

102 A. About her being loaded so deep. She looked as though she might go down any place. I made the remark when she was coming in that if I was on the boat I would jump ashore.

Mr. Masten: I object to it.

Q. Did you take any notice as to what her draft was at that time?

A. Yes, sir.

Q. Please tell his Honor what her draft was at that time?

A. LS-3 aft.

Q. Did you notice what it was forward at that time?

A. My recollection of it is not clear. I went out there and verified her draft after I looked at it when she was coming in, but I did not go forward to get her draft after I went and looked. She had got into the lock and raised up, and she was on a level so I could see plainly.

Q. How far away were you when you saw her draft in the lock?

A. The first time?

Q. Yes; when she was down to the bottom?

A. Yes.

Q. When she was coming in?

A. Yes, sir.

Q. About how far I mean?

A. 80 feet.

Q. And the second time how close were you to her when you verified that draft?

A. 15 to 18 or 20 feet.

Q. And how close was the water to her decks, Mr. Conley, when you saw her at that time?

A. It looked about even.

Q. In all of the times you have seen the Benjamin Noble, did you ever see her loaded as deeply as she was at that time?

A. No, sir.

Q. What season of the year was it, how close to the opening of navigation, on that occasion?

A. If my memory serves correctly, navigation opened on the 22nd.

Q. And this was on the 25th?

A. Yes, sir.

Q. It was very close to the opening of navigation?

A. Yes, sir.

Q. Had many boats gone through before this one had gone through?

A. No, sir.

Q. Do you happen to recall how many had gone through?

A. No, sir, I could not tell you.

Q. You don't remember that?

A. No, sir.

Q. Were the canals and rivers clear or was there ice still there?

A. The canal was clear. We had very little trouble with ice this year. The ice up there was only a few days, the first two or three days after the opening we had some trouble with slush ice.

Q. That is ice below in the river or in the canal?

103 A. The ice breaks up in Lake Superior and comes down by the gates, and that is the only trouble we have, with slush ice.

The Court: Was there any ice in the water at all?

A. When the Noble went through? I don't think there was any ice in the water when the Noble went through, but I am not clear on that point.

By Mr. Laws (continuing):

Q. That is in the canal. Was there any ice in the river below the canal?

A. Nothing only floating ice.

Q. I mean floating ice?

A. I don't recollect.

Q. Mr. Conley, have you noticed the freeboards of other boats in the years you have been there, passing to and fro through those locks?

A. Well I have somewhat, but it is one of those things that is so common that if there is nothing unusual you would not notice it. If anything unusual comes up you would notice the boat; otherwise you would not.

Q. But you did notice this boat?

A. Yes, sir.

Q. On account of her deep draft?

A. Yes, sir.

Cross-examination.

By Mr. Leckie:

Q. And the chief thing that you gentlemen there at the locks look for is regarding the draft, to see the boats are not too deep to go over the sill?

A. That is not my business.

Q. That is the business of the locking people.

A. The assistant superintendent, not the lock man and pier man.

Q. That is the concern of whoever has to do it, and that is the only concern, is it not? As long as they are light enough draft to go over the sill they do not care anything further about it?

A. That is the idea, yes.

Q. And the part that you perform up there, is that the running of the machinery to let the water in and so on?

A. No, I am on the other side of the wall. I simply open and close the north gates, on the lower end of the lock.

Q. There is a man there however, after the boat is in and the gate is closed, he goes and manipulates some machinery and the water comes boiling up from the bottom?

A. Yes, sir. That is done from the south wall.

Q. And in regard to the ice on this occasion. You are only speaking about it in connection with your lock there?

A. Yes, sir.

Q. And you don't know how it was down the river, and
104 don't know how it was out in Whitefish Bay or anything of that sort?

A. No, sir.

The Court: What was the draft of the water in that lock. How much was there?

A. I think we had 18—opened up with 18-5 or 6 in the Poe lock.

Q. How deep draft vessel would you permit to pass through there?

A. Sometimes they would put vessels through that are an inch or two more than what water we had.

Q. And let them rub?

A. Let her rub a little, yes.

By Mr. Leckie:

Q. I take it that the number of times you did see the Noble, you did not see her every time she went through there?

A. How is that?

Q. From the number of times that you said you saw the Noble, I take it you did not see her every trip she went through there?

A. No, sir.

Q. That would be equally so of the other single deck boats?

A. Yes, sir.

Q. That is all.

Mr. Laws: That is all.

JAMES J. HASSETT, after being duly sworn by the court on behalf of the claimant, testified as follows:

Examined.

By Mr. Laws:

Q. Where do you live?

A. Sault Ste. Marie.

Q. What is your business?

A. Lock man.

Q. At what point?

A. At the northeast corner of the Poe lock at that time, but not now.

Q. That is April, 1914?

A. Yes, sir.

Q. How long had you been on the locks there?

A. About 16 years.

Q. Do you know the steamer Benjamin Noble?

A. Yes, sir.

Q. How long have you known her about?

A. That is hard to tell. Four or five years I presume.

Q. And during that time how frequently have you seen her, would you say, a safe estimate?

A. I don't know. It would be safe to say I had seen her eight or ten times.

Q. During the time you have seen her was she loaded or light?

A. I would not like to say that.

105 Q. Was she ever loaded during those times?

A. Oh, yes, I have seen her loaded.

Q. Did you see her in April 1914?

A. Yes, sir.

Q. Which way was she bound?

A. Bound up.

Q. Bound up. What was the date, do you recall?

A. I am not sure but I think it was the 25th of April; Saturday afternoon or Saturday evening.

Q. 1914?

A. Yes, sir.

Q. Did you notice any thing peculiar about the boat?

A. Yes, sir.

Q. At that time?

A. Yes, sir.

Q. Please tell his Honor what it was.

A. I noticed she was, in my estimation, she was overloaded. The boys were speaking about her——

Mr. Canfield: I object to that, what the boys were speaking about.

The Court: That may stand. That it was called to his attention by being remarked about.

A. That is what I am trying to bring you, that the boys called my attention to the fact of her being overloaded.

The Court: I will permit that to stand, that it was discussed.

Q. Did you notice it yourself?

A. When my attention was called, I walked out and looked at her.

Q. Tell his Honor what you noticed with respect to her that was unusual, if anything?

A. The unusual part of it was, I considered she was overloaded; that is in my estimation she was overloaded.

Q. Did you notice what her draft was?

A. No, sir, I didn't look at the draft.

Q. How close was the water to her decks, or what freeboard did she have if any?

A. I did not measure it, but I considered she was decks to.

Q. And on the other occasions when you have seen her, did you ever see her before loaded as deeply as on that particular occasion?

A. No, sir, I never did.

Q. Did you ever see any boat go through the canal loaded as deeply as that boat?

A. No, sir. I have seen them loaded deeper, but I have never seen them down so low in the water, the decks so close to the water.

Q. What is the usual freeboard that they have, if there is any?

A. Well, of course, that depends on the size of the steamer; some have 6 or 8 feet, and some only have a foot.

Q. And some only have a foot?

106 A. Eight or ten inches. I have seen them with 8 or 10 inches in the summer season, but not at that time of year.

Q. Is there any difference in the freeboard they customarily have in April and in the summer season?

A. Oh, yes.

Q. What is the difference? I mean to say do they have more in the April season or in the summer season, or less?

A. They generally have more.

Cross-examination.

By Mr. Masten:

Q. You have, in the summer season, seen vessels loaded, of this type of vessel, down as low as this vessel?

A. I would not like to swear I had.

Q. Would you say you had not?

A. I would.

Q. You would?

A. I do not think I did.

Q. And you say your attention was attracted to her because in your opinion she was overloaded. Now when, in your opinion, is a vessel overloaded?

A. When she is decks to.

Q. When she is decks to?

A. And nothing to protect her.

Q. How much can she lack of being decks to, that she would be not overloaded in your opinion?

A. That is out of my line of business; I don't know.

Q. You have said your attention was attracted by the fact, in your opinion, she was overloaded?

A. Yes, in my opinion.

Q. Now how much freeboard would she have to have, a vessel of that type, have to have had, so that the thing would not attract your attention?

A. Oh, probably 10 or 12 inches.

Q. 10 to 12 inches?

A. Yes, sir.

Q. And if a boat of that type went through the lock, within your view, with less than 10 to 12 inches, it would attract your attention?

A. Naturally I think it would.

Q. You have sailed?

A. No, sir. I have never sailed.

Q. Now you have expressed your opinion also that the Noble as she passed through there this morning was decks to?

A. In my estimation.

Q. Do you mean decks to forward or aft or amidships or where?

A. I mean forward of the after house.

Q. How much would you say she was down by the stern if any?

A. I never looked at her stern; I just looked at forward of the after house.

107 Q. Have you ever seen the Spalding?

A. Yes.

Q. Or the Beattie?

A. Yes.

Q. Or the Norwalk?

A. Yes, sir.

Q. Or the Neff?

A. Yes, sir.

Q. Any of that type of boats passing through the canal?

A. I have seen them all.

Q. Downbound?

A. Up and down.

Q. Take the downbound. How much freeboard would they have going through the locks?

A. Generally have anywhere from 10 to 12, 14, 16, 18 inches. I have never examined them closely, understand; that is my estimation.

Q. You said you had noticed the Noble before?

A. Yes, sir.

Q. About what freeboard did she have on the other occasions, or any of the other occasions when you noticed her?

A. I have seen her, but of course I have never gone out and measured it.

Q. I understand.

A. I should judge 10 or 12 inches probably.

Q. Never less than that, except on this occasion?

A. I could not say, but I know she was the lowest then I have ever seen her.

GEORGE E. KANE, after being duly sworn by the court on behalf of the claimant testified as follows:

Examined.

By Mr. Laws:

Q. Mr. Kane, where do you live?

A. Sault Ste. Marie.

Q. What was your business in April, 1914?

A. Line man on the lock.

Q. And on what lock?

A. The Poe lock.

Q. How long had you been employed on the Poe lock?

A. I have been employed on the canal about 7 years. That was my second season on that lock.

Q. Do you know the steamer Benjamin Noble?

A. Yes.

Q. How long before April had you seen her, about how long?

A. I had seen her possibly a couple of times before, the season before.

Q. How many times altogether in the time that you were in the locks do you think you have seen the Benjamin Noble?

108 A. I do not think I have seen her more than three times.

Q. Three times. Was she loaded on those three occasions?

A. She was once loaded, and the other times she was laying at the pier. I did not notice very much about her.

Q. How is that?

A. One time she went down with a load on. The other time that I saw her, the season before, she was laying at the pier. I was not close to her.

Q. Was she light or loaded then?

A. I think she was loaded.

Q. Did you see her the latter part of April, 1914?

A. Yes.

Q. Do you happen to recall the day when you saw her, what day it was?

A. I can not recall the date, but I know it was the last Saturday in April.

Q. You know it was the last Saturday in April?

A. Yes, sir.

Q. Which way was she bound, up or down?

A. Up.

Q. And light or loaded at that time?

A. Loaded.

Q. Did you notice anything unusual about her from the time you had previously seen her?

A. Well, as soon as she started to come into the lock I noticed she was unusually deep in the water.

Q. What did you have to do with her?

A. I had to take her up the lock wall and tie her up.

Q. Did you notice her draft?

A. Yes, sir.

Q. Which draft did you notice, forward or aft?

A. Forward.

Q. What was her draft forward at that time?

A. As near as I could judge she was 18-1.

Q. And did you notice what freeboard she had at any point on the side?

A. I noticed her decks were almost awash.

Q. At what point did you notice they were almost awash?

A. About midway.

Q. I beg your pardon.

A. About amidships.

Q. Did you notice other boats going through there loaded?

A. Yes, sir.

Q. Did you notice other boats of her type going through there?

A. Some of them.

Q. What other boats have you noticed of her type?

A. The Jessie Spalding, the Fisher and the Neff.

Q. And what is the customary draft of boats, or freeboard that

boats have at this season of the year, the early season, that is going through the locks as you have noticed them?

109 A. Well, I notice they do not load so deep either in the early spring or late fall.

Q. About what freeboard do they generally have at those seasons of the year?

A. I could not say.

Q. You have no impression upon that subject at all?

A. No, sir.

Q. Have you ever seen a boat which went through there loaded as deeply as this boat was?

A. No, sir, I never did.

The Court: I suppose you refer to her freeboard and not to the draft of water. You do not refer to the water she was drawing, how close she came to the bottom of the lock when you say never so deep?

A. I refer to the decks being so close to the water, yes.

Cross-examination.

By Mr. Masten:

Q. This was the third time that you recall having seen the Noble?

A. Yes, sir.

Q. Once when she was tied at the pier?

A. Yes, sir.

Q. And once when she was loaded?

A. Yes, sir.

Q. And was she upbound or downbound on the other occasion, the loaded occasion?

A. She was upbound on one occasion and downbound on the other.

Q. Now how much freeboard did she have the first time you saw her and how much the second time?

A. I was not close to her when she was tied at the pier. The time I saw her downbound she was loaded with lumber and I could not say anything about it. That was the second time I saw her.

Q. And yet because she was not loaded in the customary manner, you took her draft as you stated?

A. Yes, sir.

Q. That is all.

JOHN ATKINS, after being duly sworn by the court on behalf of the claimant, testified as follows:

Examined.

By Mr. Laws:

Q. Mr. Atkins, what is your business?

A. Lock master.

Q. On which lock?

A. At that time I was on the Poe lock.

110 Q. That is April, 1914?

A. Yes, sir.

Q. Did you see the Benjamin Noble in April, 1914?

A. Yes, sir.

Q. About what time of the month was it you saw her if you recall?

A. It was on Saturday the 25th.

Q. Saturday the 25th?

A. Yes, sir.

Q. How long have you been on the locks there?

A. A little better than 20 years.

Q. A little better than 20 years?

A. Yes, sir.

Q. And during that time I suppose you have seen a great many boats go through and come back?

A. Yes, sir.

Q. Loaded and light?

A. Yes, sir.

Q. How often before April 25, 1914, had you seen the Noble?

A. Possibly 15 or 20 times.

Q. Possibly 15 or 20 times?

A. Yes, sir.

Q. And in this number of times, how many times would you say she was loaded and how many times was she light, that you had seen her?

A. Oh, it is pretty hard to tell; probably two-thirds of the time, two-thirds of the number of times she was loaded. I know I have seen her light several times. I could not say; and loaded several times.

Q. Did you notice anything unusual about her on April 25, 1914, when you saw her?

A. Why, yes.

Q. Tell his Honor what it was that was unusual about her?

A. She looked to have little side out.

Q. How did she compare as to the amount of freeboard that she had or side out, as you call it, with the other occasions when you had seen her going through loaded?

A. Oh, I think—I do not know as I have saw her within a foot loaded as deep, within one foot as this time.

Q. Never saw her loaded within one foot as deep as she was at this time?

A. I don't believe I ever saw her drawing over 17 feet.

Q. You do not believe you ever saw her drawing over 17 feet?

A. No, sir.

Q. Is there any difference in the practice there as regards the freeboard the boats have in the summer season and in the early spring and late fall seasons?

A. Oh, spring and fall they do not load so heavy, as a rule.

Q. Did you notice her actual draft?

A. I did aft, yes.

Q. What was the after draft?

A. About 18-1 strong. 18 foot 1.

Q. 18-1 strong; 18-1?

A. Yes, sir.

111 Cross-examination.

By Mr. Masten:

Q. How much freeboard did the Noble have on this occasion?

A. She possibly had a couple of inches.

Q. Why do you say possibly?

A. She may have been decks to. She would not, to my judgment, have over a couple of inches.

Q. You are giving it as a matter of judgment rather than your observation?

A. Well I seen her from the lock wall as she passed along.

Q. Well which was it, observation or judgment?

A. Observation.

Q. Now then how much was it she had?

A. Well, I think 2 inches.

Q. Whereabouts in her length?

A. Forward of the boiler room; between the after hatch—along there somewhere.

Q. And where were you when you noted that?

A. Why, when she was coming out at the upper end of the lock.

Q. How far from you?

A. Within a few feet; she was passing right alongside; probably 6 or 8 feet, 10 feet.

Q. And where would her deck be with reference to you? I mean its height, right out even with you or down or up?

A. It would be down a little bit; the rail was a little below the lock level.

Q. How much below the lock lever would it be, the rail itself?

A. Possibly a few inches; I don't know just exactly. Possibly a foot or less.

Q. How high were the bulwarks on the Noble?

A. I don't know. Probably a couple of feet; 18 inches somewhere like that.

Q. As she moves out, she is pretty close to the lock wall?

A. Sometimes, yes.

Q. I wish you would tell the court how you could see to as to observe how much freeboard she had as she went out of there?

A. She was out, she was enough out so you could have a fair idea you know.

Q. How could you tell how far the water line was below the main deck unless you could see the main deck, if it is a solid bulwark.

A. Yes, but there are drain holes along there.

Q. And you looked through the drain holes?

A. No. Just cast my eye on each side you know, on the deck.

112 Q. And from that observation you say it was 2 inches?

A. As near as I can tell.

Q. Then it is judgment which you are giving?

A. Yes.

Q. You are sure there was no water on her deck?

A. I did not notice any.

Q. That is all.

Mr. Hill: If your Honor please, we have agreed with the other side that certain blue prints which we have here were the plans of the steamer Noble at the time she was constructed by the American Shipbuilding Company at the Wyandotte plant. We have had the drawings certified by Mr. A. L. Cross, the chief draughtsman of the American Shipbuilding Company. That is all right, is it not, Mr. Masten?

Mr. Masten: Is that what you and Mr. Leckie agreed on?

Mr. Hill: Yes.

Mr. Masten: Very well.

(Blue prints were then marked Exhibits 18, 19 and 20.)

ROBERT LOGAN, after being duly sworn by the court on behalf of the claimant, testified as follows:

Examined.

By Mr. Laws:

Q. What is your profession, Mr. Logan?

A. Marine architect.

Q. And how long have you been a marine architect?

A. About 30 years.

Q. And what concern have you been connected with in which you have practiced the profession of marine architect?

A. I served my apprenticeship on the Clyde, Scotland, as a draughtsman and ultimately, later as chief draughtsman in two concerns. Then I went out to Canada as marine architect for the Canada Pacific Railroad, and the Canadian Government, and then here, doing a consulting business and surveying, and as general manager for the American Shipbuilding Company.

Q. Now how long were you general manager for the American Shipbuilding Company about?

A. About eight years.

113 Q. About eight years. How long were you doing marine surveying here?

A. Oh about 10—about 14 years.

Q. And when you say here, what do you mean?

A. On the lakes.

Q. On the Great Lakes?

A. Yes, sir.

Q. Just tell us in your capacity as general manager of the American Shipbuilding Company what your duties were. What did you have to do in a general way?

A. Well I had to supervise the operation of all the different plants

belonging to that company; pass upon estimates and drawings. That is about all.

Q. Do you know the Steamer Benjamin Noble?

A. Only from drawings. I don't remember ever seeing the boat.

Q. Where was she built, do you know?

A. The hull was built at Wyandotte. The machinery and boiler here in Detroit.

Q. From your plans, or the American Shipbuilding Company?

A. Yes, sir.

Q. Plans of the American Shipbuilding Co.?

A. Yes, sir.

Q. Did you make an examination of the three drawings, the displacement plan, the amidships section, and the profile and decks of the steamer Noble?

A. Yes, sir.

Q. You understand plans and can read them, can you?

A. Yes, sir.

Q. I will hand them to you. Those are the plans, which I hand you now, are they, that you examined, Mr. Logan?

The Court: Being Exhibits 18, 19 and 20?

A. Yes, these are the ones.

Q. Those are the plans?

A. Yes, sir.

Q. Will you please tell us how many hatches that boat had, and what the size of them are?

A. She had six hatches, 27 feet 6 wide, and 9 feet fore and aft.

Q. And how high were her hatch coamings?

A. 12 inches in three—no, $2\frac{1}{2}$ — $14\frac{1}{2}$ inches.

Q. Tell us whether or not she had freeing ports, and if so, how many, and how big they were?

A. There are four on each side. 36 inches long and 12 inches high.

Q. Did the boat have scuppers? Does it show whether she had scuppers or not?

A. Yes, sir.

Q. Tell us how many scuppers and how big they are and where located?

A. There is four scuppers on each side. There is no size given for them. They would be approximately equal to 3 inches in diameter.

Q. And how close were they to the deck, the scuppers?

A. They are close to the deck, right on the deck.

Q. Is there a stringer under the lower portion of the deck, an iron stringer?

A. The stringer is on the deck.

Q. Above the deck?

A. On the deck beams, and forms a part of the deck.

Q. How high above the deck was the lowest portion of the freeing ports?

A. 9 inches.

Q. Now will you just tell us what freeing ports are, what they are?

A. They are a hinged door that flaps, mostly to let the water off the deck, any water that may come onto the decks, float out of there.

Q. And at what point on the door is the hinge, on the side, bottom or top?

A. On the top.

Q. What are scuppers?

A. They are practically freeing ports also. They are lower down and of smaller capacity.

Q. They are just holes in the side of the bulwarks, smaller holes for the purpose of letting the water run off?

A. Yes, sir.

Q. And they come right down to the deck?

A. In most cases they go through the deck, but in this case they just went through the side.

The Court: Opening into it?

A. They are opening into it.

Q. So the water can flow back and forth through those without affecting the freeing ports at all?

A. The bottom of those is lower than the freeing ports, and they take care of any balance of water that the freeing ports do not take care of.

Q. How high were the bulwarks on the boat?

A. Three foot six.

Q. That is the top of the rail to the deck was how high?

A. That is 3 foot 6.

Q. And were they solid or open, except for the scuppers and freeing ports?

A. They are what we call solid bulwarks; plate bulwarks.

Q. Mr. Logan, how many net tons would 2,951 gross tons be, please?

A. 3305.

Q. And how many pounds is in a gross ton? What is a gross ton?

A. 2240 pounds.

Q. How many pounds is in a net ton?

A. 2000.

Q. 2000 pounds. Can you tell from the drawings there what the displacement of that steamer was light, without either cargo
115 or bunker coal in her?

A. Not from the drawings, but I have the figures.

Q. You have figures?

A. Yes, sir.

Q. Where did you get the figures from?

A. From the records of the American Shipbuilding Company at Cleveland.

Q. Will you tell us what displacement this vessel had without cargo or bunker coal in her?

A. 1340 net tons.

The Court: How much?

A. 1340 net tons.

Q. Assuming that this vessel on a voyage, when she was starting on a voyage on April, 1914, had 2951 gross tons, or 3305 net tons of steel rails on board, and about 160 tons of coal, can you tell us what her total displacement would be in net tons. You can take a pencil and do it. You do not have to do it in your head. You can take a pencil and a piece of paper.

The Court: It would be the sum of the three, 1340, 160 and 3305.

A. 1340, 160 and 3305, yes.

The Court: That is 4805.

A. 4805.

Q. Net tons?

A. Net tons, yes.

Q. Do you know what the registered net tonnage of this vessel was?

A. I think it was something like 1421 tons.

Q. Gross tons do you mean?

A. No; that is a different kind of tons altogether. That is measurement tons.

Q. I mean registered. When I say registered net, I mean the registered net tonnage as shown by the papers?

A. That is her gross registered tonnage?

Q. How much?

A. My recollection is 1421.

The Court: That is not this sort of ton?

Mr. Laws: No. One is capacity, and one is weight.

The Court: Let me ask: This displacement tonnage, is that the weight of the ship?

A. That is the weight, yes.

The Court: That is the weight of the ship. If you had some way of weighing her on the scales, why that is what she would weigh?

A. Yes, sir.

The Court: What is the 1340?

A. That is the weight.

116 The Court: That would be the weight of the ship?

A. Yes, the engine and everything, except fuel and stores.

By Mr. Laws (continuing):

Q. Did you make a memorandum of that? Did you make your own figures on that? Did you figure that out accurately yourself?

A. Which, the tonnage?

Q. Yes.

A. Or the displacement?

Q. I mean to say, if you figured it out, did you put it on a piece of paper?

A. Yes.

Q. Will you look at that paper and see whether you are entirely accurate on that?

A. Yes.

Q. And you say you are accurate on that?

A. Yes.

The Court: On which one are you talking about?

Mr. Laws: I am talking about the vessel's displacement.

The Court: All right.

Q. Tell us what displacement means, will you, Mr. Logan?

A. It means the weight of the water displaced by the hull of the boat.

The Court: That gets right back to the other weight which I mentioned; that is equal to the weight of the ship?

A. Yes, sir.

The Court: Because it displaces its weight. Isn't that it?

A. Yes, sir.

Mr. Laws: Yes, your Honor, displaces its weight.

By Mr. Laws (continuing):

Q. Mr. Logan, will you please tell us, assuming this vessel had on a voyage in April, 1914, the net tonnage of a vessel you have given us, 3305 tons of steel rails, net tons of steel rails 160 net tons of fuel what draft that would give that vessel?

A. About 19 feet 6—18 feet—6 I should say.

Q. Forward or aft?

A. That is mean; it might be 18-7 aft and 18-5 forward; that is amidships. 18 feet—6.

Q. What freeboard would that give her at that draft?

A. She would not have any; minus 6 inches.

Q. At what point in the boat?

A. At the lowest point ashear.

Q. And where is the lowest point ashear on that boat?

A. Amidships.

117 Q. What is the shear of that boat forward and aft?

A. She is 6 feet forward and 2 feet aft.

The Court: Have him tell me what that is.

Q. What is the shear of the boat?

A. The shear is the curve of the deck.

Q. In other words, the distance higher at her bow or stern than she is in the center?

A. Yes, sir.

Q. Or amidships?

A. Yes, taken at the side of the boat.

Q. And in your opinion would that steamer Noble be seaworthy to proceed upon a voyage in April, say 1914 for instance, to the head of the lakes at a time of the year when storms and gales might be expected, loaded with 3305 net tons of cargo and 160 net tons of fuel,—would she be seaworthy in your opinion to take such a voyage?

A. Not in my opinion, no, sir.

Mr. Masten: And what draft of water was that?

The Court: He did not give the draft in the question. He just gave the cargo and the fuel and the weight.

By Mr. Laws (continuing): And why is that your opinion?

A. Because I have been taught that all boats should have reserve buoyancy or surplus buoyancy in order to make them safe and seaworthy.

Q. Now tell his Honor and tell us, tell his Honor and the rest of us just what you mean by reserve buoyancy?

A. Reserve buoyancy would be the volume of the vessel in tons weight above the water line, between the water line and the deck.

Q. And to what extent, in your opinion, would that vessel on the displacement which you have here from the plans, admitting she was loaded with 3,305 tons of steel rails and about 160 tons of fuel, be overloaded in tons?

A. About 700 tons.

The Court: What do you say would be the proper load there?

A. 2,600.

By Mr. Laws (continuing):

Q. That is including your fuel or not?

A. No. That is outside of her fuel. That is cargo.

Q. Outside of fuel?

A. Yes.

The Court: That is net tons?

A. Net tons altogether.

118 By Mr. Laws (continuing):

Q. Mr. Logan, if this vessel were loaded so that she would have minus 6 inches of freeboard, as you stated she would have with this load, how close would that bring the water outside of the ship to the lowest portion of the freeing ports?

A. 3 inches.

Q. That is estimating the vessel is on an even keel, and the sea is calm?

A. Yes. Of course. You must know that the freeing ports rise and go forward as they go aft. 6 inches would be the figures for the freeing ports, but amidships.

Q. It would increase gradually forward and aft?

A. Yes.

Q. As you went fore and aft?

A. Yes, sir.

Q. And would the fact that the vessel might be knocked down on either side in heavy weather have any effect upon the operation of the freeing ports?

A. It might either hold them closed or hold them open.

Q. Supposing that a sea were washed over one side of the vessel on the deck, and if she were listed over, knocked down as it were to the other side, and her freeing ports on the opposite side under water, what effect if any would that have upon the ability of the vessel to free herself from the water?

A. There would be no means of getting the water off the deck.

Q. There would be no means of getting the water off the deck?

A. No, sir.

Q. So that under those circumstances, in addition to her cargo and weight, she would have the weight of the water on her deck to carry in order to right herself again?

A. Yes, she would have to have strength enough or buoyancy enough to overcome the weight of that water on the low side and right herself and come up to the other side.

Q. And if she had no reserve buoyancy could she do that?

A. The chances are she could not do it.

Cross-examination.

By Mr. Masten:

Q. Mr. Logan, you have examined those blue prints for some time and with care, have you?

A. Yes.

Q. Do they show the size and material of various parts?

A. Yes.

Q. What do you say in that regard as to the plans being a proper plan for a ship of that size, in construction, assuming the work was done in accordance with them?

119 A. I consider, as far as that goes, the vessel was constructed in accordance with proper practice.

Q. Is there anything there which will inform you as to the character of the deck. Is it on the blue print or do you know?

A. It is there.

Q. I wish you would tell us what the weight of that plate was?

A. 12½ pounds.

Q. And is that usual weight for a vessel of that character or is it a little heavy?

A. It is usual; not a little heavy.

Q. And designed, would you say, to carry all of her cargo in the hold and simply for ordinary protection purposes, or was it designed at least in a manner to carry part of the cargo on the deck?

A. The deck plate does not cut very much figure as to the deck load; it is the beams and stanchions.

Q. How do you find those in this case?

A. The beams are heavy, and evidently designed for a deck load.

Q. What size are the beams?

A. 12 inch channels.

Q. They are heavy?

A. Yes.

Q. They are a little heavier than you would ordinarily expect to find in a vessel of that type, unless she was designed for deck load?

A. Unless she was designed for deck load, it is heavier than it would be for a vessel of that tonnage.

Q. And did you speak with reference to the stanchions as well?

A. The stanchions and the underneath stringers.

Q. They are heavy, as I understand, both?

A. Yes.

Q. You have made some figures for Mr. Laws and given your opinion thereon that this vessel at the time and in the description given you was overloaded to the extent of 705 tons. That is, at 2,600 net tons?

A. Yes, sir.

Q. Would be her proper load?

A. Yes.

Q. And will you tell us in the same manner that you figured out what she would be drawing in 3,305 tons, tell the court what she would be drawing in 2,690 net tons, which you say is a proper load?

A. 16 feet.

Q. Fore and aft?

A. Mean.

Q. Now at 16 feet fore and aft what reserve tonnage would she have, between 20 and 25%? In computing that reserve tonnage what did you take into account?

A. I did not compute it.

Q. Will you compute it?

A. It is some trouble to compute it.

120 Q. You could compute it up to the main deck without any difficulty, could you not? Can you do it at adjournment?

A. No, I would need to have the vessel lines and all data that is necessary.

Q. Will you please tell the court, in figuring that reserve buoyancy, and arriving at what the percentage is, what spaces are taken into account in that connection, each one?

A. Between the water line and the main deck.

Q. Anything else?

A. No. I have not considered any superstructure.

Q. No, but I mean what is taken into account in determining whether there is a sufficiency of reserve buoyancy on this vessel or any other vessel.

A. We take the superstructures and give a certain credit for them.

Q. Do you take the hatches and the hatch coamings and the spaces included in that above the main deck?

A. No, sir.

Q. Do not the authorities take that into account as one of the things that shall be allowed for?

A. We have no rules on the lakes for freeboard.

Q. I understand that. I say don't they allow for that?

A. They do not allow for the space covered by the hatch coamings.

Q. Do they take into account the vessel's shear?

A. Take in the shear, yes.

Q. Take into account that, the enclosures above the deck?

A. They gave you a certain amount of credit for the enclosures that you have.

Q. Those which are entirely closed have one ratio, and those which are pretty nearly closed have another?

A. If there is any that is only partly closed you would not get credit for those at all. It is only for those that are not.

Q. Do you remember closed or can be closed?

A. That can be closed.

Q. Take the plans of the ship and tell us what structures there are that the rules will figure buoyancy on at all on the lakes, that would be taken into consideration?

A. The poop deck and the forecastle.

Q. How about some of the frames, the scantlings or frames?

A. Some of the frames, yes.

Q. That would be taken into account in this ship?

A. She would be allowed for that, yes.

Q. How about the round-up?

A. It is normal.

Q. It is normal?

A. Yes.

121 Q. Is anything allowed for that in ascertaining the reserve buoyancy, where it does apply?

A. Not when it is normal.

Q. What do you mean by normal?

A. A quarter inch to the foot of beam.

Q. And in this boat what would that be? What was it as a matter of fact?

A. 10 inches.

Q. Now would not that enclosed space add to the reserve buoyancy?

A. Under the deck?

Q. Yes.

A. It is allowed for in these rules.

Q. But is it allowed for in figuring the extent of freeboard?

A. You must not have less than a quarter of an inch in order to take advantage of the rules. If you have more than a quarter of an inch you get nothing for it.

The Court: Do you mean a quarter of an inch to the foot?

A. A quarter of an inch to the foot of beam. It would be a quarter of an inch rise.

The Court: To the foot?

A. Yes.

Mr. Masten: I should be very glad before we come in this afternoon if you would figure out approximately and tell us, taking those things into account which you say would be taken into account and see what her reserve buoyancy would be on the 16 foot loading which you have given, and what it would be loaded to 18 feet all around, if you have not time enough to do it accurately?

A. I cannot do it accurately.

Q. Make it as approximate as you can with what you have at hand?

A. I will do that. I will need to take the plans for that, your Honor.

The Court: You may.

By Mr. Masten (continuing):

Q. Mr. Logan, I think you said in answer to one question, that the question of reserve buoyancy as calculated, and as we have been talking about, has not been applied on the lakes in the practice?

A. It has been, but it is not today. In Lloyd's they have a rule for that.

Q. In Lloyd's Register, and that went out of existence how many years ago?

A. It is a long time; about 12 or 14.

Q. Did that practice exist after the coming in of the modern steel ships?

122 A. Well it existed after the coming in of the steel ships, because they came in about 1886.

Q. It began to go out as they came in. What took its place on the Great Lakes?

A. The Great Lakes Register.

Q. The Great Lakes Register?

A. Yes.

Q. And that practice, if it ever did obtain has not obtained in the last 14 or 15 years, has it?

A. In so far as the captain or owner deemed it wise.

Q. There is no regular rule or practice with reference to it?

A. No, sir.

Q. Among the owners or masters or anybody else?

A. No, sir.

Q. And has not been?

A. No.

Mr. Masten: I think, except something that might arise on the other, that is all.

The Court: I do not think that the record shows the dimensions of this ship. I wish you would state that.

Mr. Masten: I will be glad to have Mr. Logan do that.

The Court: Will you state that. Give *us* now the general description of this boat so I will have it. I have a picture here. That is all I know as yet as to what kind of a ship she is?

A. Will I give you the dimensions?

The Court: Yes.

A. Her recorded length is 240 feet between perpendiculars; beams, molded, 42 feet; depth molded 18 feet. She is what is called a flush deck vessel.

The Court: How?

A. A single deck vessel with a raised poop and forecastle, and is built of steel throughout, except the deckhouse, on the poop deck, which is built of wood.

Mr. Hill: What are the hatches constructed of?

A. The hatches were made with 12 inch channels with a 2½ angle or ship channel to receive the hatch cover.

Mr. Hill: I mean the hatch covers.

A. There is nothing here to show what they are, but according to these plans I should judge them to be 2½ inch pine.

123 Mr. Hill: Have you given the height of the railing?

A. I gave that; 3 foot 6.

The Court: Were the hatches put on by hand?

A. These are all put on by hand, yes.

The Court: Have you figured the remaining buoyancy in the ship, loaded according to the figures stated in the questions, and submitted to you?

A. I think Mr. Masten has asked me to do it.

The Court: He has asked you when she is loaded to 18. I understood your testimony was she was loaded 18-6.

Mr. Laws: Mean.

The Court: His question was for 18.

A. Yes, sir.

The Court: There leaves still another question I thought that I observed, that no one has asked you yet the buoyancy left according to your own figures as to the depth to which she was loaded on that occasion. Is that not right? Have you figured that out?

A. No, sir; I have not figured that out. I can approximate it though.

The Court: Do you mean by some figure?

A. Yes.

The Court: I suggest that you answer that also?

Mr. Masten: We have no objections.

The Court: Did you not also ask for 16 feet, Mr. Masten?

Mr. Masten: Yes, your Honor.

A. 16 and 18 and 18-6.

Mr. Masten: Yes.

The Court: This registered tonnage, 1421; you say that is measurement tonnage?

A. Yes, sir.

Q. Explain that to me?

A. That is an odd form, a measurement made by the government for tax purposes. It is equivalent to 100 feet to one ton; measuring the whole interior of the boat.

The Court: What class of freight would that be?

A. That is not weight at all.

The Court: The government must have some——

A. I do not know anything that would run 100 cubic feet to the ton. Water, for instance, fresh water, is 32 cubic feet to the ton. Iron ore and sand——

Mr. Masten: There is an old tradition I think which is based upon the old wine ton that is about 100 feet, for storage purposes.

A. I think the government made it 100 feet to the ton just to simplify their figures.

The Court: Now what do you say the pitch of the deck was?

A. 6 feet at the bow——

Q. The beam?

A. 10 inches higher at the center line than it is at the side line.

Q. 10 inches in 21 feet?

A. Yes, 10 inches in 21 feet.

Q. About half an inch?

A. No. It is 10 inches in 42 feet.

The Court: If it is ten inches higher than it is at the edge, and 42 feet beam, it would be 10 inches in 21 feet.

A. That is the way it is, about 10 inches in 42 feet, the beam of the boat.

The Court: The ship as I understand is 42 feet wide?

A. Yes, sir.

The Court: Clear across?

A. Yes.

Q. And it is 10 inches higher in the middle than at the edge?

A. Yes.

Q. The actual rise must be almost half an inch to the foot?

A. Yes, but it is spoken of and known as a quarter inch to the foot. For instance, if it was 40 feet beam, that 10 inches would represent a quarter of an inch; that is the way it is mentioned in the books and the practice.

Q. Now as to the term freeboard. How did you use it. Evidently you do not use it as to the edge of the boat and the edge of the water?

125 A. From the edge of the deck amidships to the water level, to the top of the water, that is freeboard.

Q. And you say that loaded in this way the water would be 6 inches higher than the top of the deck?

A. According to the figures I have, yes.

Q. Why would not the water run in through the scuppers and under the decks?

A. It would.

Q. All the while?

A. Just amidships.

Q. I say amidships then. If your figures were correct, at amidships she would be 6 feet, the decks would be 6 feet under water?

A. Not quite; that 6 inches is from the top of the beam; on the beam there is a $\frac{5}{8}$ inch stringer placed with an angle iron that is about another $\frac{5}{8}$, which gives it an inch and a quarter.

Q. We will say 4 and three-quarters—

A. Yes, sir.

Q. (Continuing:) —inches under water it would be?

A. Yes, according to those figures.

The Court: We will take a recess until 2:00 o'clock.

(Recess until 2:00 P. M.)

Afternoon Session, Wednesday, February 17, 2 P. M.

ROBERT LOGAN, resumed the stand for further

Cross-examination.

By Mr. Masten:

Q. Did you make the calculations, Mr. Logan, which you were requested to?

A. Yes, sir.

Q. Will you please give us the result of them and give us the figures at the same time upon which you base them, so that they can verify them if they desire?

A. On 16 foot draught the displacement scale shows a displacement of 4100 net tons; measuring from that to the deck, and allowing for the shear, gives here a surplus of 1060 tons. These figures are approximate, not exact. Her surplus bouyancy is 25.8 on an 18 foot mean draught or two feet deeper she has a displacement of 4660 net tons, and the surplus of 500 net tons, giving a reserved bouyancy of 11%. At 18½ feet she has 4805 net tons displacement, giving a surplus bouyancy of 360 tons; a percentage of 8.

Q. That was all you were asked for, was it, Mr. Logan?

A. Yes, sir.

126 Q. Now, will you please detail just what spaces you took into account in computing that reserved bouyancy in any instance?

A. Nothing above the deck. I did not make any allowance for superstructure or anything of that kind.

Q. And if they are enclosed on deck, they are allowed for, are they not?

A. If they are enclosed, there is a slight allowance made for them.

Q. You did not allow anything for the height of coaming and nothing of that character?

A. No, sir.

Q. Nor the round of the deck?

A. The round of the deck I did.

Q. What did you allow for that?

A. Half of 10 inches or about half the length of the boat.

Q. That is a matter which would affect the bouyancy of the vessel, is it not?

A. Yes, sir.

Q. I understood you to say this morning it was not taken into account?

A. If she was under water.

Q. If she was submerged to the highest point on the deck, she would displace just that much more water?

A. Yes, sir.

Q. It is usual *it is* not to furnish a loading scale in connection with the displacement scale in the construction of such ships?

A. Not unless they ask for it.

Q. But it is unusual.

A. No.

Q. You assumed in one of your answers here the bunker capacity was 160 tons?

A. No. The contestants testified she had 160 tons of fuel.

Q. Assuming, Mr. Logan—although it is not introduced yet—the loading scale for the Noble on which I find it noted, that her bunker capacity was 146 tons. That would make a little difference in your computation, would it not?

A. I took the figures as they were given to me, 160 tons.

Q. But 146 tons would make some difference?

A. Some, about half an inch.

Q. Whereabouts has that vessel her bunkers?

A. Just aft the extreme afterend.

Q. What would be the effect upon the draught of that vessel as coal was being consumed?

A. It would lighten up the draught at the stern.

Q. Could you approximate how much it would lighten up, say, consuming either 50 or 100 tons, how much she would raise aft; how much she would go down forward, having the moid of the vessel and all before you?

A. Well, if she consumed 100 tons she might come up 6 inches aft and go down 3 inches forward.

127 Q. I wish you would look at that scale again and see if you have not given me the wrong measurements for the hatches. You gave them as $27\frac{1}{2}$. I should think you measured from the wrong part. I think you will find it 29.

A. (Referring). $26' 6''$.

Q. Measuring from what parts?

A. The opening of the hatchways.

Q. Give us the full width of the hatch?

A. Two feet more than that. 9 feet hatches, that is the hatch coaming.

Q. You are speaking of the opening through the deck?

A. Yes, sir.

Q. But the enclosed part is $29\frac{1}{2}$?

A. Yes, sir.

Q. Did you say this morning you thought the hatches were $2\frac{1}{2}$ inches thick?

A. The hatch covers.

Q. I wish you would look and see if it is not 3?

A. I cannot tell you that here.

Q. That is then, simply what you judge?

A. That is all.

Q. Now, single decked vessels of this type carry more or less water occasionally on their deck, don't they?

A. In bad weather.

Q. And that is what these freeing gates are put in there for?

A. Yes, sir.

Q. Were they within the description of the ordinary and usual type of vessel of her size?

A. They are of lake vessels.

Q. And in your computations, you did not allow anything for the space enclosed by the hatches above the main deck?

A. No, sir.

The Court: I understand your figures to mean that the total displacement of the Noble maximum would be 5160 tons or 5165 tons at that point, and that would be her sinking point?

A. At $18\frac{1}{2}$ feet.

The Court: That displacement would be the sinking point. In other words, adding together your displacement at 18 or 16 or

18½, adding that to your surplus I get the result either of 5160 tons or 5165 tons.

A. 4160 is my figures.

The Court: That is the sinking point?

A. Yes, sir.

The Court: In other words, deducting her own displacement when light leaves the maximum amount of cargo which will leave
128 no surplus, 3825 tons would be the sinking point. A load of 3825 tons would sink her.

A. (Computing.) About 3960 I make it for her load and fuel.

The Court: No, but if her load was actually 3550 and her coal was 160 tons, that is 3465. That of course would not be enough to sink her in still weather?

A. No, she had a surplus of 500 tons.

The Court: For example, taking in one of these, you make her total displacement, her maximum displacement of 5160, is that right?

A. Yes, sir.

The Court: Then we subtract her own weight 3840, which would leave 3855, which would take her up to her sinking point?

A. Yes, sir; that includes coal.

The Court: In other words, take her light and put on 3835 net tons would take her to the sinking point and leave no surplus?

A. Yes, sir.

The Court: Then I am correct in understanding the analysis of your figures?

A. Yes, sir. She has not one pound of *buoyancy* which would save her from going down.

By Mr. Laws:

Q. In other words, at 18-12 feet you figure that if she ships 350 tons of water, that would then sink her?

A. Yes, sir.

Q. Then at this sinking point, where would the water come on the deck? Tell me by any way you can.

A. In inches?

Q. Yes, amidships.

A. It would be level with the top of the bulwarks, level with the rail.

Q. Do you figure she would sink before it reached that point?

A. Lying in still water, I do not think she would sink until she reached that point; at least, my figures do not show that.

Q. But as near as you can estimate or figure it, 360 tons of water, would fill her to the rail of the bulwarks amidships?

A. Yes, sir.

By Mr. Masten:

Q. In that you allow nothing for the two forecastle enclosures?

A. No, sir.

129 Q. And by the sinking point you mean on the mathematics you have there, but you do not mean the vessel would sink under those conditions?

A. I think she would.

Q. And you would not allow anything for the fore-castle enclosures?

A. No, sir. There would be nothing in the enclosures and probably 26 inches by the poop.

Q. Is it possible, while navigating, to have that vessel full up to the rail, full of water, and carry it there?

A. No, sir, it is not possible.

Q. The shear of the deck would throw it off?

A. Yes, sir. She would ship water; she would be in a constant state of motion throwing it off and taking it on.

Q. And she would be constantly relieving herself by the free board?

A. Yes, sir.

By Mr. Laws:

Q. If she was under water would the free ports be of any use in freeing that boat of water?

A. No, sir; not of any use if the free ports were under water.

Q. Mr. Logan, the Steamer Jesse Spalding, has been referred to frequently. Did you have anything to do with the designing of that boat?

A. Yes, sir.

Q. Do you know what draft she was designed to sail on?

A. She was designed for 14 feet.

Q. To draw 14 feet?

A. Yes, sir.

Q. Is that the draft the designer considered would be seaworthy for her to sail on?

A. Yes, sir.

By Mr. Masten:

Q. How much free board would that leave on the Spalding, Mr. Logan?

A. Two feet.

Q. And you think then if she was loaded to anything more than 2 feet she would be unseaworthy?

A. She would be taking chances.

Q. And not safe to go out?

A. Except in good weather.

Q. It is a fact, is it not, that for a great many years, the question of what the designer intended from an architectural point of view is not controlling on the loading of a vessel on the Great Lakes?

A. No, sir; not here.

Q. Has it ever been here?

A. Yes, at the time the Inland Lloyd- Rules were in force.

Q. Was it ever marked on the vessel?

A. Not that I know of.

Q. Don't you know, as a matter of fact, it has never been marked on the vessel?

A. I am pretty sure it has not.

130 Q. And that is the architect's point of view and not that of a seafaring man?

A. No, the seafaring man had been consulted in the formation of these rules for free board.

Q. But those rules do not obtain on the Lakes?

A. No.

Q. And the shipbuilder does not designate any loading line himself, does he?

A. No, he cannot do that.

Q. He has, in the computation of the building of the ships, a theoretical view of what would be a perfect load for her, is that true?

A. As a rule, the owner, when he contracts for the building of a ship, tells the contractor: I want a boat that will carry so many tons on a certain draft, and travel at a certain rate of speed.

Q. And that draft is regulated largely upon whether he is going in the canal trade or whether he is going in the general trade above?

A. Yes, sir.

Q. And it is a question of getting through the locks that had to do with that?

A. Yes, sir.

Q. And that is all the question of loading had to do with it?

A. Well, that is all the owner cares about, but the shipbuilder always makes a boat with a certain amount of free board in addition to the draft which the owner gives him to work for.

Q. That is what the naval architect does in every case?

A. Yes, sir.

Q. If there were rules obtaining or a practice obtaining as to the depth which certain vessels would unload that night or might not correspond with that mathematical or theoretical line which the shipbuilder and architect has in his design, it might be allowed, more or less?

A. Yes, we would abide by the rules.

Q. You would abide by the rules?

A. Yes, sir.

By Mr. Laws:

Q. Under the Lloyds Inland Rules, when they were in effect, how much free board would this boat have been required to have?

A. My recollection of the Inland Rules for free board was 2 inches to the poop deck forward.

Q. This boat had how many feet depth of hold?

A. She has 15 feet depth of hold.

Q. And under those rules that would require a free board of how much?

A. 30 feet.

Q. While we are speaking of rules, tell us whether or not there are any free board rules adopted by the English Lloyds, the Bureau

of Veritas; the French Bureau of Veritas, and the German
131 Lloyds?

A. As far as I know, they all adopt the British Board of Trade Rules for free board.

Q. What would their rules require for the free board of this boat?

A. I could not tell you.

Q. Do the Great Lake-Register have anything to say about free board in their rules?

A. Not that I know of.

Mr. Masten: The British Board of Trade Rules come under the Government and by that they are not meant to apply to British vessels, but they are adopted by standard societies as a rule, when the boat is classed they have a free board assigned to them by the classification society, but is not compulsory.

A. It is true—recently they have.

Q. And the Bureau Veritas does the same?

A. The Bureau Veritas has classed frequently.

Q. Don't you know it to be a fact when they do class them here, that is one of their rules they do not apply at all, and it is left to the Lake practice?

A. They do not mark the water line on them.

Mr. Laws: What are the German Lloyds and the French rules based upon, do you know?

A. The British Board of Trade rules.

Q. And what are they themselves based upon?

A. There is a committee appointed to frame up certain rules for free board of vessels; not for inland vessels.

Q. Are those rules based upon experience in vessels?

A. They were experienced men that had to draw them up, and assign them, and then they were passed by the Government as a standard for the registered vessels to load to, and the Lloyds adopted them, and they are all marked on the side of a boat, the winter load line, the summer load line, the fresh water load line, and the salt water load line, all four of them.

Mr. Masten: What is that mark called?

A. The plimsoll mark.

Q. And they have never done such a thing in the Lake trade within your knowledge?

A. No, sir.

132 JACOB S. RICHIE, after being duly sworn on behalf of the libellant, testified as follows:

Examined.

By Mr. Laws:

Q. Where do you reside?

A. New York.

Q. What is your business, Mr. Richie?

A. Engineer and surveyor; inspector.

Q. How many years have you been a marine engineer?

A. It is forty years since I went to learn my trade.

Q. Have you had any sea experience?

A. Yes, sir, I was at sea 9 years steady, and off and on in the meantime.

Q. What license as an engineer have you held?

A. Chief engineer.

Q. How long have you held it?

A. 22 or 23 years.

Q. Have you ever had any experience in the loading of vessels?

A. Three years' experience and nothing else practically. And I have been doing it since I have been with this company for 3 years.

Q. What company are you with?

A. The Insurance Company of North America.

Q. Where did you have those 3 years' experience?

A. In the National Board of Marine Underwriters.

Q. Whereabouts?

A. In New York.

Q. During your experience, what experience have you had in supervising the loading of vessels?

A. We inspected the loading to see if it was stowed all right, and was not broken, and all that, and before the ship went out we took her draft and saw that she was not below her mark. If she had a free board mark we would look that up, and if she had none we would estimate our own mark.

Q. You would estimate her own mark, why would you do that?

A. That is the mark of safety.

Q. What other experience have you had in the supervision of vessels in addition to that?

A. I have superintended the building of vessels very largely.

Q. Did you ever have any experience with any steamship lines with their vessels in charge?

A. Yes, I was superintendent of the Hawaiian Line in San Francisco and the Lukambach Line in New York.

Q. How long were you superintendent of the Hawaiian Line on the Pacific?

A. About 5 years.

Q. What did your duty in that capacity require you to do?

133 A. I looked after the building of those ships; saw that the drawing and everything were carried out all right, equipped them ready for sailing. And I had ships coming from New York, and I would look after them and take care of the cargo.

Q. Did that include the loading of the cargo?

A. Only once in a while would the loading; it was mostly with the discharging.

Q. What were your duties as superintendent of the Lukambachs in New York?

A. Keeping the ships in repair and looking after the load of one ship of nearly a year which was carrying rail road iron from Key West.

Q. Mr. Richie, have you examined the plans of the Steamer Noble?

A. Yes, I have looked them over.

Q. You understand the plans of a ship, do you?

A. Yes, sir.

Q. Could you determine what the displacement of the vessel was, without cargo, fuel, just the vessel herself?

A. You mean flying light?

Q. Yes.

A. Yes, if I had her draft, flying light, I could tell. It would be worked out with a very technical work by getting her weights.

Q. Did you ascertain what her displacement was, how many tons?

A. Yes, sir, 1,340 tons.

The Court: Net or gross.

A. That is net.

By Mr. Laws:

Q. Assuming that vessel on a voyage in April in 1914, on the Great Lakes, when storms would be expected, started with 2951 gross tons, and 3305 net tons of steel rail cargo, and 160 tons of coal, can you tell us to what point or what draft that would give her?

A. Yes, sir, 18 feet mean draft. That is, taken on a center line.

Q. What free board, if any, would that leave her?

A. It would leave her none. She would be minus; minus 6 inches.

Q. At what point in the ship?

A. That would depend upon the way she was trimmed. That would be the lowest point of sheer.

Q. Wherever that was?

A. Yes, sir.

Q. In your opinion, would that ship be seaworthy to undertake a voyage in the month of April on the Great Lakes with that load or cargo at a season when she would be liable to meet severe winds and gales.

134 Mr. Masten: If the court please, I want to enter an objection. So far as the man has qualified, it has been entirely in salt water experience, and not with that character of boat, no experience whatever in this class of boat; he has distinctly said that, and I would like the objection.

The Court: Overruled.

A. The ship would not be seaworthy. In the first place, her decks would be awash, and the cargo is the worst kind of a cargo that ever went in any ship in any kind of sea way at all. The man would not be able to navigate her, and anything that would happen to her hatches, if anything did happen, he could not get to them in time; she would be washed up to the top of the bulwarks, in any kind of wind or any kind of sea.

Q. What are the free ports for?

A. For the clearing of water from her decks.

Q. Did you examine the plans to determine where the freeports were and how they were built?

A. Yes, sir.

Q. Tell us how high above the deck or lower portion, the freeing ports were?

A. About 9 inches, as near as I can tell by the blue print.

Q. And how are they arranged for the purpose of opening with respect to the hinged portion?

A. That does not show, but they are generally hinged outside on the top in a small ship like that.

Q. On the top?

A. Yes, sir.

Q. Look at that plan please, and see if that does not show these were hinged on the top?

A. I don't remember that.

Q. Look at the longitudinal section, Mr. Ritchie, and see?

A. No, sir, I don't think it shows.

Q. Assuming, Mr. Ritchie, and those freeing ports worked from the tops, swung from the top, and inward, I think they swing inward?

A. No, they swing outward.

Q. Yes, they swing outward. If those freeing ports were under water at either side at a time when the vessel should happen to ship a sea from the other side would that have any effect, or would the fact the low side of that vessel was under water have any effect upon the working of the freeing ports?

A. Yes; they would not open.

Q. Why, would they not open?

A. The pressure of the water outside would keep them closed.

Q. The pressure of the water would keep them closed?

A. Yes, sir.

Q. You said a cargo of rails was a bad cargo for a ship.
135 Just tell his Honor upon what you base your opinion in that regard?

A. Well, if they are evenly stowed they are all right. The weight is so low it makes the ship very stiff, and that makes her unseaworthy.

Q. Why does that make her unseaworthy?

A. When she rolls she goes down slow, and it takes a long time to recover. She would lay over and probably ship 2 or 3 times before she gets coming back again.

Q. Would the fact a vessel was low in the water with the sea close to the deck, increase or decrease her liability to ship seas?

A. Oh, yes.

Q. Which would it do?

A. If she is low in the water it would take the whole wave, the whole crest of the wave right over her.

Q. As the freeing board increases the tendency to ship seas would be lessened?

A. Yes, sir, it would break the waves.

Q. In your judgment, assuming this vessel was loaded with say 330 tons net tons of steel rails, with 160 tons of coal, tell us to what extent that vessel would be overloaded in order to be unseaworthy?

A. 690 tons or between 600 and 700 tons.

Q. What freeboard in your opinion ought she to have had to be seaworthy, to undertake a voyage on the lakes at that season of the year, in April, when she might be expected to meet heavy weather and gales?

A. 2 feet and a half.

Q. Two feet and a half?

A. Yes, sir.

Q. What is it that would determine whether a vessel was seaworthy or unseaworthy, as to her loading I mean? What factors would enter into that as to whether she was seaworthy or unseaworthy, so far as loading was concerned?

A. One factor is not to load too deep, and distribute that cargo so that the ship will ride easy in a sea way.

Q. Does the question of reserved buoyancy enter into that question of seaworthiness, in your judgment?

A. Oh, yes, there is something in that.

Q. What percentage of reserved buoyancy in your opinion should a vessel have to be seaworthy for a season of the year in which she is liable to expect heavy weather and even gales?

A. About 20%.

Q. If this vessel was loaded with 3305 tons and 160 tons of coal, what percentage of reserved buoyancy would she have had?

A. I didn't go into that very carefully, but take her deck erections and allowing everything you possibly could, she had about 11 or 12%.

136 Q. In your judgment, would that be sufficient to render the vessel seaworthy?

A. Not with that cargo.

Cross-examination.

By Mr. Masten:

Q. How would the cargo differ from a cargo of iron ore, if of the same weight?

A. There wouldn't be any difference.

Q. No difference, would there?

A. No, sir, I don't think so.

Q. The weight would be all in the bottom, would it not?

A. Yes, sir.

Q. You have never had any experience with lake vessels?

A. No.

Q. Have you ever had any experience whatever with the construction or operation of Great Lakes vessels?

A. Yes, with the construction of them.

Q. What type of vessels have you had experience in?

A. Well, I can name one or two. I was on the Great Lakes here several times when I was in the Register of the American and Foreign Shipping.

Q. What vessels were those?

A. I don't remember the names of the vessels I was in.

Q. Your experience has been almost entirely on salt water?

A. Yes, but we have had quite a number of lake going vessels ride down on the coast.

Q. Now, what rules did you follow or what practice did you follow in determining this vessel should have had from 600 to 700 net tons less, to be in your opinion seaworthy?

A. The Board of Trade Rule.

Q. You mean the English Board of Trade Rule?

A. Yes, sir. Then there is another rule that is very simple that is in the Registry of American and Foreign Shipping, that is so many inches depth of hold, that practically comes out the same. That is the Board of Trade rule. It is the old Liverpool rule which it is based upon.

Q. It is an arbitrary rule, it has not been adopted by them?

A. Yes, it is arbitrary. It has not been adopted by them.

Q. Do you know whether or not it is ever applied to Great Lake vessels?

A. No, sir, I don't.

Q. Do they differ from salt water vessels to your knowledge?

A. As a general thing there is a great many of them down there. There are 8 or 10 or 12 down there.

Q. Taken from here down there?

A. Yes, sir.

137 Q. But there is a marked difference in the construction of the Great Lakes ship and salt water ships?

A. We have vessels of the same type down there.

Q. Then would you say there is no marked difference in the ocean construction from the lake construction?

A. Oh, yes, there is a difference. We build them heavier.

Q. And they are employed on different waters with different seas and different conditions entirely surrounding them, are they not?

A. Yes, I suppose so.

Q. I understood you to say that with a cargo of rails or ore, being the same thing, and low down in the vessel that she would recover herself on a roll so slowly that she might ship two or three seas before she could get back?

A. Yes, sir.

Q. You feel quite confident about that?

A. Yes, sir.

Q. I have had a notion the effect would be the other way myself.

A. That is a wrong impression, and a great many would think so.

Q. Possibly so. You also said when the vessel rolled down so that her freeing ports were submerged, that the pressure of the water on the outside would keep the gates from opening; would not the angle of the deck allow the water to get off more freely than through the ports, if she rolled down that far? Would not that angle of inclination allow that vessel to free herself of water over the rail more than through the freeing ports?

A. It would go over the rail surely. The rail would be under.

Q. I think you said you had been connected at one time with the Lukambachs of New York.

A. Yes, sir.

Q. When?

A. That was when I came back from San Francisco.

Q. They have a somewhat smaller type of steam vessel have they not?

A. Yes, they have smaller ships.

Q. They have large towing vessels?

A. They have a fleet of large towing vessels, ocean going boats, probably 160 or 170 feet long.

Q. Powerful boats?

A. Powerful boats, ocean towing boats.

Q. What freeboard had they?

A. They are high freeboard.

Q. Have they any at all?

A. Oh, yes, about 18 inches to 2 feet.

Q. Does not the water go over the decks practically constantly?

A. They are all sealed up tight with iron hatches, with rubber gaskets on.

Q. So far as the decks are concerned?

A. Oh, they are all sealed tight.

Q. Haven't they any main deck?

A. Oh, yes.

Q. Whereabouts with reference to the surface of the water?

A. About 18 inches above the water.

Q. It is pretty down close to the water?

A. Yes, sir.

Q. They are sea going vessels?

A. Yes, sir.

Q. Do they ever go below Hatteras?

A. Oh, yes, they go as far as Porto Rico.

Q. Below Hatteras, that is a pretty stormy place?

A. Yes, sir.

Q. The real question is not the location of the deck but having things properly sealed up?

A. That is one thing.

Q. That is the real thing?

A. Yes, sir.

Q. And of course something is likely to go wrong in any trade?

A. Yes, sir.

Q. But it is the only ordinary reasonable risks that you endeavor to guard against?

A. Might guard against the overloading of the ship; that is all.

Q. Did you know the Steamer Carlton which came from the coast up the lakes?

A. There were two Carltons. One runs down to the West Indies; she is an English ship. That is the one I am referring to.

Q. This is an English ship I think. While I am ascertaining that, I would like you to tell us how you get at this 1340 tons of dead displacement, as you say? How did you get at that?

A. That is the weight of the ship when light.

Q. How did you arrive at that?

A. Well, that is the draft that was given to me by Mr. Logan. That is all. I took his word for it. But I figured it out on the weights and I got pretty close to that.

The Court:

Q. There are two ways of getting at that, as I understand. One is to take the draft light and figuring the displacement of the water?

A. That is the quickest way.

Q. And the other is to take the ship and actually figure out her weight?

A. Yes sir.

Mr. Masten: You have given what you regard as a proper basis for determining whether a ship is overloaded or not, resulting in this case that she would be overloaded if she did not have at least 2 $\frac{1}{2}$ feet freeboard. Do you wish to be understood as saying if she had 2 feet she would be unseaworthy?

A. No.

Q. Do you want to be taken as saying if she had only a foot she would be unseaworthy?

A. No, I would not say that. That would be her safe margin.

Q. Do you want to be understood as saying if she had only 6 inches out and no accident happened to her, outside the ship I mean and inside by way of the giving away of something, that she would be unseaworthy? I am not taking into account whether she has one or the other. I am simply asking your opinion as to exactly what place you would say her actual unseaworthiness began.

A. It would depend on her intended voyage. She would be perfectly safe laying here at the dock in the river.

Q. Would it depend upon anything else?

A. Upon the weather she would encounter.

Q. But that fact in and of itself you would not say constituted her an unseaworthy vessel?

A. No.

Q. It might come from bad weather?

A. That would be a question. That is the reason that mark is on.

Q. Ships are lost with that mark on?

A. Yes, sir.

Q. They get unlooked for stress?

A. Yes, sir.

Q. Something may go wrong with the machinery?

A. Yes, sir.

Q. There are a thousand things that might happen?

A. Yes, sir.

Q. Now, I want to confine it to the marking of this arbitrary line—I will not say arbitrary line but the line you would place. Down to what point do you get that freeboard in such a vessel as has been shown to you here by this blue print, and I assume that is the only knowledge you have of her—until you can say she is unseaworthy?

A. I could not do that.

Q. If it should happen to be the fact that prudent owners and

prudent masters have for years been accustomed for years to disregard anything in the nature of an arbitrary fixing of a load for lake craft at any season of the year, but from their practical knowledge of it and their experience have fixed their loads as the judgment of the master of the ship sees fit, would you think an arbitrary judgment would be better than that?

A. That is what the Board of Trade rules are based upon, experience and knowledge.

Q. Yes, but not having them here they would necessarily
140 follow the judgment of the people here who have had years of experience—

A. Oh, no; not at all.

Q. Did you ever have anything to do with the Steamer Beverton?

A. No.

Q. In that 20% buoyancy which you fix as the minimum for reserve buoyancy as being in your judgment necessary, or the judgment of the British Board of Trade authorities, what spaces are taken into account in the computation, in computing the reserve buoyancy?

A. Close structures, decks sealed tight, all enclosed structures above the main deck are enclosed water tight.

Q. Do they regard them as permanently closed, water tight, or simply constructed so that they can be closed in the ordinary sea way?

A. No, they have got to be enclosed permanently, water tight.

Q. I think the British Board of Trade rules read "Closed or partially closed." Is that your recollection?

A. If they are partially closed they would not be water tight.

Q. My recollection is deck structures closed or partially closed.

A. I don't remember that.

Q. And even including bridges when they are open at both ends?

A. Bridges?

Q. Yes.

A. Open at both ends, no.

Q. And your recollection is that partially enclosed structures are not taken into account?

A. I think so. I am not sure of that.

By Mr. Laws:

Q. Mr. Richie, if I said to you, or you assumed this particular vessel, on a voyage in April, loaded with 3,305 net tons of cargo, and about 160 tons or a little less of fuel, at the head of Lake Superior during a storm, which was not extraordinarily severe, if she went down when other vessels of the same general type and some smaller, some larger, went through without any difficulty whatever, would that confirm your opinion that the judgment of the master, if it was his judgment, that determines the load, was good or bad?

Mr. Masten: Will your Honor let us have an objection to that as immaterial?

Mr. Laws: If you object to the question I will withdraw it.

Mr. Masten: Yes, I object to it.

Q. The tug boats you have referred to on the Atlantic seaboard or that Mr. Masten referred to, do they have a solid rail, or not solid rail, the ocean tug boats?

A. They have a low rail with scupper pipes in. It is only 16 or 18 inches high.

Q. These other boats you have referred to or that Mr. Masten referred to, these barges, have they got solid bulwarks or not?

A. No. Our barges were old sailing ships and the rail was where the stanchions were but we took the boards off.

Mr. Masten: Those are old ships you have fixed in that manner?

A. Yes, sailing ships. We built a few barges.

Q. And you relieved the strain against the sides of the ship in that manner?

A. Yes, sir.

Q. That is what that was put on for?

A. Yes, sir.

CHARLES E. ROSS, after being duly sworn on behalf of the libellant, testified as follows:

Examined.

By Mr. Laws:

Q. Where do you live, Mr. Ross?

A. I live in New York.

Q. What is your business?

A. Naval architect, marine engineer. Consulting engineer and surveyor.

Q. What preliminary training have you had as marine engineer?

A. I am a graduate of the University of Pennsylvania in 1888. Post graduate mechanical engineer in 1889. From then until about 1899 I was with the Roach Ship Building Co. at Chester, Pa. Then with the Morgan Iron Works until about 1903. And from that time to the present in the survey and examination of ships—consulting work.

Q. During your experience with the Roach Ship Building Co. at Chester, Pa., tell us what your duties were?

A. We designed and constructed vessels for various trades; built them, tried them out.

Q. What types and what sizes?

A. Mostly the coastwise trading vessels, and various types of barges, and general shipyard work.

Q. Does that include steam boats?

A. Yes, sir; I think we built but one sailing vessel in that time.

Q. About how many vessels during that time did you have to do in any way with the designing of, approximately?

A. Oh, I suppose it would run over 100, connected with them in one way or another. That is quite a guess. I will say a large number.

142 Q. You said you were with the Morgan Iron Works at New York. What is their business?

A. Their business was more particularly in the repairing of vessels. However, we did some construction work there. The Morgan Iron Works in New York and the Roach Ship Building Co. were quite in the same family, but after a time they diverged more or less, separated.

Q. Now, for the past how many years have you been a surveyor in New York?

A. A matter of about 12 years as surveyor there.

Q. For whom have you surveyed ships or cargoes?

A. Mostly for the ship owners.

Q. During the 12 years of your experience there, how many ships approximately have you had to do with the surveying of?

A. I think it runs an average of about 2 a day. Call it one if you will.

Q. What class of boats does that take in?

A. All kinds, from small boats of 10 feet to the largest kind that we have had.

Q. Did you make an examination of the plans of the Steamer Benjamin Noble?

A. Yes, I saw the plans.

Q. What was the displacement of the vessel herself without fuel or cargo?

A. From those plans?

Q. Yes.

A. I cannot tell you.

Q. You did not work that out?

A. I cannot tell you, no, sir.

Q. Assuming that vessel had on board 3305 net tons of cargo, and about 160 tons of fuel, can you tell us from your examination of the plans what the total net displacement of that boat would be?

A. No, sir.

Q. Can you tell us what her draft would be?

A. No, sir.

Q. What additional evidence did you have to have in order to determine that?

A. The draft, the weight of the hull light, without cargo or coal.

Q. What is that?

A. The weight of her hull. You have given only the weight of the cargo and the coal. You have not given the weight of the hull.

The Court: In your answer to that question, do you mean you could not tell the weight of the hull from the plans?

A. No, sir, not from the plans. If given her weight, the weight of the hull and the weight of the cargo and coal, the weight of the various parts, the floors, frames, beams, decks and the sum total of the weight, we could figure her displacement.

143 By Mr. Laws:

Q. Assuming her displacement when light was 1340 tons, and

that she had 3305 net tons of rails on board, and about 160 tons of fuel, what would her gross displacement be?

A. That brings that up to 4805 on this scale and shows the draft 18-6.

Q. Draft?

A. Yes, sir.

Q. What freeboard would that allow the vessel, so far as to the depths of the vessel?

A. What do you mean?

Q. How deep was she at the side?

The Court: Can't you tell that from the plans?

A. No, sir. You haven't told me the depth the vessel was.

Q. Look at the amidship section and see if you can ascertain?

A. 18 feet molded depth would give her about 6 inches over draft or minus 6 inches freeboard, if you will. Overdraft of 6 inches.

Q. In your experience have you had anything to do with fixing the freeboard on vessels?

A. Yes, sir.

Q. Just tell what your experience in that line has been?

A. My experience in that line has been more particularly in the last few months when some of our steamers have been going abroad carrying various things to other countries, which has been necessary by reason of Hull Association in New York, to determine the free board for the vessels. That, however, has been based more particularly on the load line Act of the British Government plus 9 inches, and in a great many cases we had to go over the figures for the original load line and then certify to the difference between 9 inches and whatever it happened to be, and make the certificate which was the proper load line for the vessel to load.

Q. What is a vessel load freeboard for? What is the object of that?

A. As a reserve of safety, or reserve of bouyancy? A safety proposition.

Q. Tell his Honor what you mean by reserve bouyancy.

A. It is the relative amount of the enclosed portion of the hull above the water line.

Q. Upon what are the rules of the British Lloyds based, if you know?

A. I think they are based upon the load line Act of the British Government.

Q. Do you know what that is based upon?

A. Yes, sir.

Q. What is that based upon?

A. It is based upon the accumulation of data taken for the particular types of ship running over a period of years which data
144 is tabulated, and a series of rules and tables have been laid down, so that the load line itself is an arbitrary line and is applied, to the ship, varying under known conditions, above or below that. It is varied above or below that according to the rule. I had a copy of the load line.

Q. What difference, if any, is there in the load line between fresh and salt water?

A. The difference of bouyancy based upon the salt and fresh water.

Q. What is the difference in density of salt and fresh water?

A. The weight of salt water per ton is 3500 long tons and of fresh water it is 36; the short tons would be 32; I don't know what the other is.

Q. Assuming this vessel, the Benjamin Noble, had *and* displacement of 1340 net tons carrying 3305 net tons of rails and about 160 tons of fuel, on a voyage upon the Great Lakes at a time when she might expect heavy weather and severe gales, what would be the percentage of reserve buoyancy in that vessel?

A. I cannot answer that, sir.

Q. In your judgment, would a vessel under those conditions be seaworthy?

A. In my judgment, from my experience of particular cases, no, sir. I have never seen a steam vessel loaded with decks under.

Q. What in your opinion is the percentage of reserve buoyancy necessary to make a vessel seaworthy to encounter heavy weather; what do you regard as sufficient?

A. Applied to this particular boat?

Q. Applied to anything.

A. That is the relative depth of the boat compared with her superstructure.

Q. Have you examined these plans sufficiently to form a judgment as to what would be a proper and safe percentage of reserve buoyancy for a voyage in the spring time where heavy winds and gales and seas might be expected?

A. I cannot form such an opinion for this particular boat in this particular service, no, sir.

Cross-examination.

By Mr. Masten:

Q. I think you said your experience had all been confined to salt water construction?

A. Yes, sir.

Q. With the exception of such boats as may have come down from the lakes?

A. Yes, sir, with the exception of some which have come down from the lakes that we have had to deal with.

Q. That is all.

Mr. Laws: I would like to offer in evidence certified copy
145 of the enrollment of the Steamer Noble certified to by the
Collector of Customs at Detroit.

The Court: That will be admitted.

Marked Exhibit 21.

Mr. Laws: Subject to the right to offer testimony in rebuttal, as to weather and seaworthiness, should that be introduced on the other

side, we rest our case here. And I understand that all these papers that have been referred to are now in evidence, without formally offering them over again.

The Court: They are all admitted.

Mr. Laws: We rest.

Mr. Masten: Does your Honor care for any further statement from us before we start on the proof?

The Court: You may suit yourself about that. I have a sort of idea about the lawsuit and what you claim, but I would be glad to hear from you.

Mr. Masten: I will make it brief as to what we expect to prove. I might say while the witnesses for the claimant have given our vessel, of herself, a good character, we will show she was constructed in the manner that she was properly inspected on the very day she left on this voyage, found all in proper shape, with nothing wrong in her steering gear, and nothing had been wrong in her steering gear, that she was loaded in the ordinary and usual manner, and not as deeply as she had been loaded before, and that she didn't have from 3 to 6 inches of water on her deck, but in the course of that voyage she encountered a storm on Lake Superior and foundered at an unknown place in an unexpectedly severe storm for any season of the year, and most exceptional for that season. Along with that we shall endeavor to show by quite a number, if it is required, of men who have sailed this type of boat and know all about them that in the trim she was, she was an entirely and perfectly seaworthy within any definition of that term which the courts have laid down yet, and we shall contend on the question of seaworthiness, that that vessel was reasonably fit to encounter the ordinary perils she might expect to encounter on a particular voyage. And

146 we furthermore claim the matter is foreclosed because they have made no allegation in their pleadings entitling them to show this thought was within our privity or knowledge, and this regardless of whether she was overloaded, we shall claim the benefit of limitation of liability. Without going in detail that will be about the line our proof will show; a perfectly constructed ship, properly handled, properly inspected, properly manned; coupled with that we shall show or expect to show that she was handled and loaded as has been customary complying in every respect with good practice in that regard.

Mr. Leckie reminds me I said she foundered. We do not know that. We simply know she did not turn up whether she was in a collision or whether she broke her pumps or whether her propeller became disabled, whatever happened to her we do not know. The ship has been gone for 16 months.

Mr. Hill: Your pleadings allege she foundered.

Mr. Masten: That we assumed.

Mr. Canfield: We offer in evidence the following depositions taken by consent at Duluth, Mr. Spencer there appearing for the owners of the Noble, and Mr. Hill for the claimants.

Reading deposition of Charles Lederly.

CHARLES LEDERLE, a witness on behalf of the libelant, being first duly sworn, testified as follows:

Direct examination.

By Mr. Spencer:

Q. What is your full name?

A. Charles Lederle.

Q. Where do you reside, Mr. Lederle?

A. At 725½ Lake Avenue South.

Q. Duluth, Minnesota?

A. Yes, sir.

Q. How old are you?

A. I am sixty-four.

Q. What is your occupation?

A. Lighthouse keeper.

Q. At what place?

A. At Duluth range light station.

Q. That is at the harbor entrance at Duluth, is it, the lighthouse that you take care of?

147 A. Yes, the three lights; two pier lights and the outside pier lights and then the inside light, and also the fog signal.

Q. Where are the lighthouses located?

A. Right at the end of the piers; that is, two of them; one at each end of the pier and the other one about close to the aerial bridge.

Q. How many piers are there at the entrance to the Duluth harbor?

A. Two piers.

Q. And these are designated by what names?

A. The south pier and the north pier.

Q. At the outer end of the north pier you have a light?

A. I have an electric light.

Q. And how is that operated, from the shore?

A. Yes. That is, at times. Of course, you can operate it both ways; but in case of a storm, you can operate it from the shore.

Q. How long is that north pier,—about?

A. Well, that's something I haven't any idea of.

Q. Just approximately. Two thousand feet would you say?

A. I should say about two thousand feet, I guess.

Q. And what is it built of?

A. Concrete, cement.

Q. Has one light on the outer end?

A. On which side?

Q. The north pier has one light?

A. Yes, sir.

Q. How wide is the Duluth canal?

A. Three hundred feet.

Q. Now, the south pier is how long?

A. It is the same length as the north pier.

Q. On the outer end of the south pier there is a fixed light?

A. There is a fixed light.

Q. How near the outer end is that light stationed?

A. Within twenty-five feet of the end of the pier.

Q. What sort of a lighthouse do you have there?

A. Well, we have what we call the fog signal station and on the top of the tower there is a red fixed light.

Q. How high is the top of the light tower from the lake level?

A. About forty-five feet.

Q. What other light is there on the south pier?

A. On the south pier?

Q. Yes.

A. There is a range light on the south pier close to the aerial bridge.

Q. That's about half way—

A. Two-thirds of the way.

Q. —in from the lake?

A. Yes.

Q. What is the south pier made of?

A. Concrete.

148 Q. How is this concrete placed, in blocks or solid?

A. In blocks.

Q. What is the size of these concrete blocks that form the south pier?

A. Ten feet long and about four feet high and about five feet wide.

Q. About how much would these concrete blocks weigh, do you suppose?

A. Well, I suppose they weigh—I haven't got the least idea how heavy that—

Q. Solid concrete?

A. Solid chunk.

Q. How long have you been in the lighthouse service?

A. Thirty-three years.

Q. How long in Duluth?

A. Four years.

Q. Do you remember the storm that prevailed at Duluth and vicinity at the time of the loss of the Steamer Noble?

A. Yes, sir.

Q. This occurred on the night of the 27th and 28th of April, 1914?

A. Yes.

Q. Where were you during that night?

A. I was on watch on the 27th from eight P. M. until twelve midnight.

Q. About what time did the storm begin, if you remember?

A. It did not begin on my watch.

Q. What time did you go off watch that night?

A. I go off at twelve M., midnight.

Q. And were you up again that night?

A. No, sir.

Q. How long did the storm continue?

A. The storm continued—

Mr. Hill: Does he know when it began?

Q. Do you know when the storm began?

A. There was two boats went out the time I was at watch; one at twenty minutes to twelve and the other just as the first assistant relieved me on watch.

Q. What vessels were they?

A. Just about the same size as the Noble,—small freighters.

Q. Do you remember the names?

A. No; it was too dark.

Q. What was the state of the weather?

A. It was raining and blowing some, but not enough to keep a boat from going out.

Q. What direction was the wind from at that time?

A. Northeast.

Q. When you were off watch, where did you go?

A. I went home.

Q. And who took your place on watch?

A. The first assistant.

Q. What is his name?

A. Richardson.

149 Q. Did you go to bed that night?

A. Yes, sir.

Q. What time did you come on duty again in the morning?

A. At eight o'clock.

Q. What was the weather condition at that time?

A. It was blowing a gale of wind from the northeast.

Q. About—could you venture an idea as to the velocity of the wind at that time? You observed it, did you?

A. The wind was blowing a gale; the sea was going over both towers of the pier.

Q. The waves, you say, were going over the lighthouse?

A. When it struck the end of the pier the spray went clear over both towers.

Q. How high is the tower on the north pier,—the light tower?

A. About forty-five feet from the level of the lake.

Q. About what was the velocity of the wind as nearly as you could estimate?

A. About 50 or 60 miles an hour.

Q. Was the storm an unusual one?

A. Yes, sir.

Q. Had you ever, during your experience at Duluth, known of as severe a gale as that?

A. Yes.

Q. When was that?

A. When I was at Two Harbors.

Q. When?

A. In 1905.

Q. With the exception of the 1905 storm, did you ever know of as violent a sea and storm as that was?

A. No, sir, I do not, except way back in '81.

Q. Such a storm as occurred at the time the Noble was lost, you say was an unusual one for Lake Superior?

Mr. Hill: Object to that as there is no time stated as to when the Noble was lost.

Q. Such a storm as occurred on the 27th and 28th of April is unusual?

Mr. Hill: Objected to, as the witness has not testified there was a storm on the 27th.

A. Yes, sir.

Q. Go on, Mr. Lederle, and state what you saw of the effect of the storm when you came on duty the following morning, the morning of the 28th?

A. Well, the storm, I should judge, was at its height; that is, it was blowing hard. Every time a big sea struck the end of the pier it would come over the top of the tower, and it would fall in between the piers; that is, in the walk; that was overflowing all the time.

150 Q. How high above the lake level is the walk that leads out to the lighthouse tower?

A. About 25 feet.

Q. And you say the seas broke right over the top of the walk leading up to the lighthouses?

A. And filled the inside every time.

Q. What effect did this heavy sea have on the structure of the piers, if any?

A. Well, it didn't show much effect; that is, not to my knowledge; no. It just filled in the walk with water.

Q. Do you remember of the block of the concrete pier being displaced?

A. Yes, sir—but that was displaced by the next storm.

Q. When did that occur?

A. That occurred about a month later.

Q. In your statement here regarding this you say—the storm had carried away a block of concrete—

A. Yes—so it has. I remember now. It carried away a block.

Q. —10 feet by 3 feet—and 2½ feet thick?

A. That's right.

Q. Out of which pier was this washed?

A. Out of the north pier.

Q. How far from the outer end of it?

A. It was the fifth block from the stairs,—oh—about 200 feet.

Q. What effect did the sea and the wind have on the windows of the lighthouse?

A. Well—it smashed the windows in.

Q. What sort of material were these windows made of?

A. Just the same way as any common window.

Q. How high above the lake level were they situated?

A. About 25 feet.

Q. They were somewhat higher than the pier itself on which they rested?

A. Oh—yes—about four feet.

Q. Did you go out and visit the lights on either end of the piers that morning?

A. It was impossible to go out that morning.

Q. Why was it impossible?

A. Why—there was no way of getting out; the walk was filled with water.

Q. The seas broke over the piers to such an extent that you couldn't go out?

A. Yes.

Q. Did that ever occur before during your administration of the lighthouse at Duluth?

A. No, sir.

Q. Ordinarily you walk out on top of the pier, do you, to the outer end of the pier where the light is situated?

A. Yes, and sometimes if the sea gets too big, we've got an underground passage.

151 Q. What about the underground passage at that time?

A. It was filled in with water and ice. There was ice on there so you couldn't get out.

Q. You have a tunnel running out to that?

A. Yes.

Q. How long did this state of things continue? How long did this storm continue to such an extent that you couldn't get out?

A. Until the next morning, until about eight o'clock, the 29th.

Q. Continued all of the 28th?

A. It did, yes, sir. All the 28th we couldn't get out, until about nine o'clock next morning.

Q. And all of the night of the 28th?

A. Yes, sir.

Q. And up to?

A. Up to the 29 at 9 A. M.

Q. Were the lights on the north pier burning during all that time?

A. No, sir, there were no lights during that night.

Q. Which night?

A. During the 28th and 29th.

Q. Both lights were out?

A. No, sir. The north pier was a going, and the inside light, the range light, was agoing; but the fog signal light was not going on the north pier.

Q. The south pier you mean?

A. Yes, sir, the south pier.

Q. The north pier light was burning?

A. Yes.

Q. And the range light on the south pier?

A. Yes.

Q. But the fog signal light on the south end of the pier was out?

A. Yes.

Q. That had been out for two nights?

A. For one night, you might say.

Q. Was it a usual thing to have severe storms at that time of the year?

A. Well, we generally do get a storm like that in the spring of the year, but not as severe as that.

Q. How does this compare with the ordinary blows that ordinarily occur on Lake Superior at that time of the year?

A. It was something unusual.

Cross-examination.

By Mr. Hill:

Q. You have been at this station for four years?

A. Yes, sir.

Q. And before that time you were over at Two Harbors?

A. For nineteen years; and ten years at Sand Island.

Q. You went off watch at twelve o'clock midnight of the 27th of April?

A. Yes, sir.

152 Q. And you were off watch until eight o'clock the morning of the 28th of April?

A. Yes.

Q. And during that time you were off watch you were at home?

A. Yes.

Q. Captain Richardson relieved you at the time you were off watch?

A. Yes.

Q. Up to the time you went off watch, there was no storm except a drizzling rain?

A. That's all.

Q. So that any storm that came up, came up after you went off watch?

A. Yes.

Q. You noticed two boats go out of the canal before you went off watch?

A. Yes.

Q. They were freighters?

A. Yes, small freighters.

Q. You didn't see those boats again?

A. I did not.

Q. Now, were there any other boats lost that night, that you know of, Captain?

A. Not that I know about.

Q. And you would know about it if any were lost in this vicinity?

A. Yes.

Q. The storm that you speak of that occurred when you were stationed in Two Harbors—in 1905, what time of the year was that?

A. That was the 29th of—I think it was the 29th of October.

Q. In the fall of the year?

A. Yes, sir.

Q. Now, as a matter of fact, you do expect and do have storms in the spring of the year and also in the fall of the year?

A. Yes.

Q. And they occur at the opening of navigation and at the time of the closing of navigation?

A. Yes.

Q. So a storm is not unusual?

A. No, a storm is not unusual.

Q. Does a northeast wind back up the water at this end of the lake,—it has that tendency?

A. Yes.

Q. And dependent upon the severity of the storm, the higher the water is backed up?

A. Yes.

Q. How high have you known it to back up with a northeast wind?

A. I have noticed it between two feet—

Q. Have you ever known it to back up higher than that?

A. No, I have not. I haven't been here long enough.

Q. You spoke about a block, about its being displaced by a subsequent storm, one subsequent to this storm of April 28th,—that was about a month later?

A. This was the same block.

Q. Was there a storm a month later?

A. Yes, but not quite so severe. It was bad enough. We couldn't set out,—that is on top. We went through the tunnel.

153 Q. But in this subsequent storm you couldn't get out to the light either?

A. Just at that time in April, the 27th or 28th, it was impossible to get out there through that tunnel.

Q. That was because the ice had filled in through the tunnel?

A. Ice on the tracks about 4 or 5 inches high, and the tunnel filled with water.

Q. But if it hadn't been for the ice you could have gotten out?

A. Yes.

Q. So, excluding the condition of the ice, you had the same storm, but you were able to get out because there was no ice?

A. Yes.

Q. You said that you estimated the wind to be 50 or 60 miles an hour? Now, Captain, if the government report shows that at that time the wind velocity was only 40 miles an hour, you would be led to believe that your judgment was wrong?

A. Yes.

Q. So your judgment is simply an off-hand guess?

A. I don't know nothing about it.

Q. You don't know anything about wind velocity?

A. No, I have never studied that.

Q. You have never made any tests to check up your judgment of wind velocities?

A. No.

Q. So that was simply a mere guess?

A. Yes.

Q. You are perfectly willing to abide by the government reports as to the wind velocity?

A. Yes.

Q. And a wind 40 miles an hour is not an unusual thing on the lakes?

A. No, I suppose not.

Q. I show you Claimant's Exhibit "Z" and ask you whether or not that paper bears your signature?

A. Yes, sir.

Mr. Hill: I simply offer this for identification.

H. W. RICHARDSON, a witness on behalf of the libelant, being first duly sworn, testified as follows:

Direct examination.

By Mr. Spencer:

Q. What is your name in full?

A. Herbert W. Richardson.

Q. Where do you reside, Mr. Richardson?

A. At Duluth, Minnesota.

Q. How long have you been a resident of the City of Duluth?

A. Somewhat over sixteen years.

154 Q. What is your occupation?

A. I am in charge of the United States Weather Bureau in Duluth.

Q. How long have you been in the employment of the United States Weather Bureau?

A. Twenty-nine years.

Q. Sixteen of these years have been continuously spent at Duluth?

A. They have.

Q. In your position of Manager of the Weather Bureau at Duluth do you keep records of storms and weather conditions?

A. I do.

Q. Over how long a period do the records of weather conditions at Duluth extend?

A. Something over forty-three years.

Q. Do you remember about the time when the Steamer Noble was said to have been lost on Lake Superior?

A. I do.

Q. Have you with you such data that you are enabled to testify as to the weather conditions prevailing at Duluth on the 27th and 28th and 29th days of April, 1914?

A. I have.

Q. Beginning we will say with the evening of the 27th of April you may go on and state the hourly wind velocities and the direction of the same. I will change that to the beginning on the afternoon of the 27th of April, 1914, at one o'clock?

A. In order that I may better answer the question—do you wish the total average in each hour or the maximum velocity in each hour?

Q. The maximum velocity and the average velocity, we will say beginning at one A. M. on the 27th?

A. We make a special record of the maximum velocity in each hour, where it exceeds 29 miles.

Q. Beginning with the hour ending 5 P. M. of April 27th, 1914, I wish you would give the maximum velocities each hour and the average velocities each hour and the direction of the wind for each hour from that time until the morning of the 29th of April, 1914?

A. It may save a little time by stating that the prevailing direction that the wind blew from was from the northeast in all of the hours on all three days, and I will give first, beginning at the hour ending 5 P. M. the number of miles made in each hour on the 27th: 6 P. M., 23 miles; 7 P. M., 24 miles; 8 P. M., 27 miles; 9 P. M., 29 miles; 10 P. M., 35 miles; 11 P. M., 32 miles; 12 M., 29 miles, on the 27th, from 4 to 5 P. M., 26 miles. At 4:52 P. M. on the 27th, 26 miles; at 4:52 P. M., 32 miles from the northeast.

The maximum velocity, by the way, is for a period of five 155 minutes. 5 to 6 P. M., 30 miles from the northeast. 5—10 P. M.—

Q. How long did that occur?

A. Each of these velocities I am giving is for a period of five minutes. And from 6 to 7 P. M., 32 miles from the northeast, 6:50 P. M.; 7 to 8 P. M., 33 miles from the northeast, 7:50 P. M.; 8 to 9 P. M., 42 miles from the northeast, 8:35 P. M.; 9 to 10 P. M., 37 miles from the northeast, 9:12 P. M.; 10 to 11 P. M., 31 miles from the northeast, 10:13 P. M.; 11 to 12 M., 32 miles from the northeast, 11:05 P. M. The extreme velocity for a space of a minute or less was at the rate of 46 miles per hour from the northeast, at 8:30 P. M.

Q. That brings everything down then to the midnight of the 27th?

A. Yes, so far as wind is concerned.

Q. Just a word in regard to maximum velocities. As I understand your records, the instruments record for a duration of five minutes, the maximum?

A. Yes. The time given here is the time at which that high velocity ended, that is, the five minutes ending at the time given.

Q. You have nothing to show how long that continued?

A. I would have to refer to the original record sheet of that and that is on file at Washington.

Q. It may have been for a much longer period than five minutes?

A. It may have,—a velocity approaching that figure.

Q. Beginning now with midnight of the 27th, go on and give the same velocities for the next six hours?

A. April 28th, all the directions were from the northeast as stated. 12 M. to 1 A. M., 24 miles; 1 to 2 A. M., 29 miles; 2 to 3 A. M., 34 miles; 3 to 4 A. M., 33 miles; 4 to 5 A. M., 38 miles; 5 to 6 A. M., 40 miles. The number of miles recorded in each hour.

Q. Give the maximum velocities during that same period?

A. 32 miles from the northeast at 1:25 A. M.; 42 miles from the northeast at 2:25 A. M.; 36 miles from the northeast at 3:24 A. M.; 42 miles from the northeast at 4:25 A. M.; 48 miles from the northeast at 5:32 A. M.

Q. Then the next six hours the same?

A. 6 to 7 A. M., 46 miles, 41, 40, 40, 40, 40, at 12 M.

Q. And the maximum velocities during that six hours?

A. 6 to 7, 51 miles from the northeast, at 6:23 A. M. 7 to 8 A. M., 48 miles from the northeast at 7:05. The record is missing from that time until noon, because of ice on the cups.

Q. Going on with the next six hours?

A. The mileage, 12 to 1 P. M., 41 miles; 1 to 2 P. M., 156 41 miles; 2 to 3 P. M., 43 miles; 3 to 4 P. M., 37 miles; 4 to 5 P. M., 37 miles; 5 to 6 P. M., 37 miles. The maximum velocities, 45 miles from the northeast at 12:08 P. M.; 45 miles from the northeast at 1:15 P. M.; 47 miles from the northeast at 2:20 P. M.; 40 miles from the northeast at 3:30 P. M.; 40 miles from the northeast at 4:18 P. M.; 42 miles from the northeast at 5:53 P. M.

Q. And the next six hours?

A. Mileage 6 to 7 P. M., 38 miles; 36 miles; 29 miles; 28 miles; 26 miles, and 24 miles in the hour 11 P. M. to midnight of the 28th. The maximum velocities, 48 miles from the northeast at 6:55 P. M.; 46 miles from the northeast at 7:05 P. M.; 34 miles from the northeast at 8:20 P. M.; 34 miles from the northeast at 9:23 P. M.; 33 miles from the northeast at 11:05 P. M.

Q. Then the next six hours. That would be of the 29th.

A. Mileage, 1 to 2 A. M., 21 miles; 2 to 3 A. M., 21 miles; 3 to 4 A. M., 18 miles; 4 to 5 A. M., 18 miles; 5 to 6 A. M., 19 miles; and there were no maximum velocities exceeding 29 miles after that time. I neglected to add in the record of the 28th that the extreme velocity was at the rate of 64 miles an hour from the northeast at 6:56 A. M., for the space of a minute.

Q. This brings everything down to what time?

A. 6 A. M. of the 29th of April.

Q. Give the next six hours if you have it?

A. 6 to 7 A. M. of the 29th, 22 miles; 7 to 8 A. M., 20 miles; 8 to 9 A. M., 19 miles; 9 to 10 A. M., 18 miles; 10 to 11 A. M., 17 miles; 11 to 12 A. M., 23 miles. No maximum velocities.

Q. During the 27th and the 28th was this wind from the northeast accompanied by rain or snow?

A. Yes, sir.

Q. Which?

A. Well, rain and snow and sleet. I can give you the times of the beginning and ending.

Q. About when did the rain, sleet and snow begin?

A. The rain began at 4:20 P. M. of the 27th.

Q. And how long did that continue?

A. It continued until 10 A. M. of the 28th, when it changed to sleet.

Q. What effects did you observe as resulting from this storm in and around the Duluth Harbor?

A. The sea was very heavy and the records here state that the water was about two feet higher than usual in the harbor, and the records also state that it was one of the most severe storms in recent years. It does not, however, in continuity compare with the
157 so-called Mataafa storm of November 27th, of the 28th, 1905, when the high velocities continued for a much greater period.

Q. But both storms, as I understand you, were of unusual severity?

A. They were.

Q. Do you know what effect this storm of the 27th and 28th of April had on the piers of Duluth?

A. I don't recollect.

Q. Did you observe anything of vessels coming ashore?

A. Not from our station. I had to depend on newspaper reports; we had a record of that, but we use that sort of a record, where it seems authentic, just to preserve our record.

Q. Do you recollect what effect this storm of the 27th and 28th had on the various coal docks here?

Mr. Hill: Object to that unless the witness knows the particular time any disturbance was made at these coal docks.

A. We merely have records here stating that the coal docks were damaged and which ones.

Q. Did this storm appear to be a steady velocity or wind that occurred in unusual pulse?

A. I should say a more or less steady velocity, but there were times when there were tremendous gusts that prevailed for possibly half a minute at a time—or possibly less, which our instruments would not record; and I think that is pretty well borne out by other features.

Mr. Hill: We don't want anything about the other features.

A. I am merely using that explanation so as to give you a full idea as to the character of our record.

Q. Were there any other effects of the storm in and around Duluth that you personally saw during the two days of the storm that would go to show something as to its severity?

A. Why, the tremendous seas appealed to me very strongly. I don't recollect that I ever saw such a heavy sea, even in the Mataafa storm, and we are in full view of that.

Q. Your weather observation station is where you have a full view of the Duluth Harbor and the lakes for a great many miles?

A. For fifty or sixty miles.

Q. How far can you see?

A. There are times when we can see seventy miles down the lake. We have an elevation of over 530 feet from the floor of the offices.

Q. And during the 27th and 28th, did you observe the coal docks and trestles that were blown down around Duluth?

A. I did not; I didn't observe that.

158 Cross-examination.

By Mr. Hill:

Q. Mr. Richardson, what time were you on duty?

A. About half past seven in the morning.

Q. You mean the 27th?

A. That is my usual rule. I don't remember this particular day.

Q. What time on the 27th?

A. I should say, based on my usual experience, that I was in the office at half past seven. I have to be there every morning at that time.

Q. What time do you go off duty?

A. About noon.

Q. What time do you come on duty again after your noon recess?

A. About one o'clock.

Q. Then what time do you go off duty?

A. About 5 P. M. To make the situation a little bit clearer, I live right there. It is from the dining room into the office. I practically live there all the time.

Q. You are not on from five o'clock until the next morning?

A. Technically I am not, but I was there.

Q. What time do you go to bed?

A. I don't remember.

Q. Approximately.

A. About eleven o'clock.

Q. So you saw nothing of the so-called storm, not until the next morning?

A. I should say that—except that I keep in touch with the apparatus, and I size up the situation if there is anything special; answer telephone calls and such things.

Q. You didn't get up again until the next morning after you went to bed that night?

A. I don't remember if I did.

Q. I show you claimant's Exhibit "1," being a copy of hour wind direction and velocity at Duluth for April 27th and 28th, 1913, and ask you if you will compare that with the original records and let me know whether or not that is correct?

(Witness compares same.)

Q. You have checked over Claimant's Exhibit "Y" and it is correct?

A. It checks. Yes, it compares with our records.

Mr. Hill: I offer Claimant's Exhibit "Y" in evidence.

Q. Now, you have given us certain maximum velocities at certain designated times. Do I understand that your recording instrument does not act continuously, or is it working continuously?

A. It works continuously.

Q. What do you mean when you say that a certain maximum velocity was indicated by your instrument?

159 A. I meant that the wind attained a velocity above a given figure for that length of time. Just to illustrate: Between 6 and 7 P. M. of the 28th the maximum velocity was 48 miles an hour from the northeast at 6:55 P. M.; that is for the five minutes ending at 6:55, or for the rest of the hour the wind might have blown continuously for 47 miles; but 48 was the maximum in that particular,—that was the highest for any five minutes.

Q. So that during that period it never reached any higher velocity?

A. Except for the space of one minute in that hour the wind reached a rate of 64 miles an hour from the northeast.

Q. For one minute?

A. Yes, that represented the highest velocity for any one minute during that day.

Q. Do you notice that the average on this record is very much lower in all cases than the maximum given?

A. That is very true.

Q. That would indicate that the high wind velocity continued only for a short period in those periods?

A. In the case of puffy winds it might blow very hard for a short space and then die down and then increase.

Q. The fact that the average is low indicates that that is a fact?

A. Yes, sir.

Q. You have your records there for other years?

A. No, sir; this is just the record of 1914.

Q. You say your station is situated something like 500 feet above the lake level?

A. Yes, sir.

Redirect examination.

By Mr. Spencer:

Q. You spoke in your direct examination of your instruments being covered with sleet at one time, so that they didn't record. About what time was that?

A. That was between 8 A. M. and noon of the 28th.

Q. And you said something in your direct examination about the puffs being very strong during that storm, did you ever know of a storm since you have been here where the puffs were so extreme as they were on this particular occasion?

A. I remember one other storm. I couldn't tell you off-hand now—. It occurred in the evening, a thunder storm; lasted just a few minutes—a storm prior to the big storm where so many vessels were lost on Lake Huron.

Mr. Hill: That was in 1913.

A. We had a storm that lasted just a little while. I remember there were some tremendous puffs then.

160 Q. With the exception of that, do you know of any storm where there were such severe puffs as on April 27th?

A. I don't remember offhand

Recross-examination.

By Mr. Hill:

Q. It is usual to have more severe winds in the spring and the fall than at other times of the year?

A. It is quite the rule, except that in the winter time——

Q. Excluding the winter time.

A. The colder months——

Q. And that is when your wind reaches its highest velocity?

A. As a rule.

Q. And that is when you have recorded the most frequent storms?

A. As a rule.

Q. It is quite usual, Mr. Richardson, to have the seas break over the Duluth piers in storms?

A. In a great many storms; I wouldn't say that in all storms that would occur because there might be a heavy northwest wind and they wouldn't.

Q. But with a northeaster blowing in shore?

A. It is quite often the rule, but I wouldn't say always,—depending on the severity of the storm.

Q. Of course, when the water is raised by a northeaster that would contribute to the seas piling up and breaking over?

A. Possibly.

Q. A wind of 40 miles an hour is not extraordinary?

A. We regard that as a gale; we display storm warnings when we expect——

Q. You have had a wind of 40 miles an hour a great many times?

A. Not so often as some people would suppose. It isn't in the usual class, nor is it in the rare class. A 30 mile wind is a more common occurrence. We often have a so-called gale with wind only 30 or 36 miles.

Q. A 40 mile wind is not unusual?

A. No, it is not rare.

Q. Mr. Richardson, have you got the records which show the maximum velocity of the wind for the months of April for the last ten years?

A. I have.

Q. Will you just give what they are?

Mr. Spencer: Objected to as irrelevant and immaterial.

A. April, 1914, 51 miles per hour, northeast, on the 28th;

April, 1913, 49 miles per hour, northeast, on the 10th;

April, 1912, 70 miles per hour, northwest, on the 26th;

161 April, 1911, 54 miles per hour, southwest, on the 13th;

April, 1910, 49 miles per hour, northeast, on the 11th;

April, 1909, 60 miles per hour, northeast, on the 29th;

April, 1908, 55 miles per hour, northwest, on the 10th;

April, 1907, 60 miles per hour, northwest, on the 16th;

April, 1906, 48 miles per hour, northwest, on the 21st;

April, 1905, 39 miles per hour, northwest, on the 9th.

Q. You carried us back through 1905?

A. Yes, sir.

Q. And on your records you classify winds with a velocity of more than 40 miles per hour as gales?

A. Yes, 40 miles or better.

Q. And the figures you have given us are the maximum miles per hour that the winds reached per hour?

A. On any five minute period.

Q. Have you made any data of compilation showing numbers of verifying wind velocities in excess of 40 miles an hour for the period covered from 1905 to 1914?

A. I have.

Q. I ask you to produce it.

(Witness produces data.)

Q. During the months of April, 1905, to 1914, inclusive, will you state how many gales are noted on your records from the northeast, during the months of April?

Mr. Spencer: Objected to as irrelevant and immaterial.

A. Ten.

Q. And how many gales during the months of April of winds from other directions?

A. Three from the southwest; three from the west; and nine from the northwest in that ten years.

Q. In other words, you have noted twenty-five gales during the months of April over a period of ten years?

A. Yes, sir.

Q. What does this statement further show? I am referring to Claimant's Exhibit "X."

A. It shows the number of gales of 40 miles per hour or better for the ten years, 1905 to 1914, for all directions, for all months, as well as the absolute velocity in each of the severe storms, for those directions in those ten years.

Q. To explain, Mr. Richardson, the figure "68," being the second figure under "Absolute Velocity," in the last column of figures indicates that the wind during the month of April for some of these years reached the maximum velocity of 68 miles per hour?

A. It does.

Mr. Hill: Offer in evidence Claimant's Exhibit "X."

Mr. Spencer: Objected to as immaterial and irrelevant to the issues in this case.

Q. Now, Mr. Richardson, a wind of a velocity of 55 miles an hour during the month of April, during the last ten years, is not an unprecedented affair?

A. No.

Q. And you have had frequent gales during the month of April from 40 miles to as high as 68 miles per hour during the month of April?

A. I would not say that. I would say an occasional——

Q. This statement, Claimant's Exhibit "X," indicates, does it not, that your gales are considerably more frequent in the spring months of the year and in the fall months of the year than during the rest of the navigation season?

A. It does.

Q. In order to fully explain this exhibit it ought to have on it that this is only a record of gales exceeding 40 miles per hour?

A. Yes, I will put that on.

FRED BENSON, a witness on behalf of the libelant, being first duly sworn, testified as follows:

Direct examination.

By Mr. Spencer:

Q. What is your full name?

A. Fred Benson.

Q. Where do you reside?

A. I reside at Park Point, Minnesota.

Q. How old are you, Mr. Benson?

A. 60 years old.

Q. What is your occupation?

A. I am captain of a tug.

Q. You are a licensed operator of steam vessels?

A. Yes, sir.

Q. And your business has been that of a steamboat man for how long?

A. Oh, since I was sixteen years old.

Q. Your seafaring life hasn't been entirely confined to the sailing of tugs?

A. Oh, no.

Q. Are you licensed to sail other kinds of vessels?

A. I have an unlimited license.

163 Q. How long have you been sailing tugs around the Duluth harbor?

A. I commenced work here in 1888 and I think I have been in this harbor ever since. I haven't worked all the season every season.

Q. And during the year 1914, what tug were you in command of?

A. The Harvey D. Goulder.

Q. Do you recollect the storm of the 27th and 28th of April, 1914, in which it was reported the Steamer Noble was lost?

A. Yes, I remember the storm.

Q. What tug were you in command of then?

A. The Harvey D. Goulder.

Q. Where were you during the night of the 27th? The 27th of April.

A. The night of the 27th I was at home, on Park Point.

Q. About what time did the storm begin, if you recollect?

A. Why, according to the best of my recollection, it began some

time in the afternoon of the 27th, and increased gradually, with rain—northeast wind.

Q. Whereabouts on Park Point is your residence; you say you were at home the night of the 27th?

A. 2531 Minnesota Ave.

Q. Is that near the lake?

A. Just about,—I should judge 500 feet from the lake.

Q. What time did you get to your tug on the morning of the 28th?

A. Six o'clock in the morning.

Q. What was the weather condition?

A. Blowing hard, big sea and rain.

Q. What direction was the wind?

A. Northeast.

Q. What observations did you make as to the effect this storm was having on things around the Duluth harbor at that time?

A. Why, at that time, the morning of the 28th, I don't know that I noticed. I noticed the water was very high when I got over to the tug. I noticed I was very wet, by going from the car down to the tug. It was raining hard; blowing hard.

Q. Did you notice what the sea was that morning as you left your residence?

A. It was a big sea.

Q. Where was your tug that morning when you went aboard?

A. She was in what we call the "limekiln slip."

Q. And how did you reach your tug from your residence, where you spent the night?

A. I came up on the street car from the Park Point line and took the aerial bridge line to Sixth Avenue West and walked down.

Q. The aerial bridge you speak of is the bridge over the Duluth canal?

A. Yes.

164 Q. Did that give you an opportunity of observing the seas running at that time?

A. Yes. Right aside the lake all the way down on the car.

Q. Give some illustration, if you can, how high the seas were running at that time.

A. Why, it looked to me as if there was a terrible big sea outside,—line of breakers along the beach. When I got to the canal the seas were breaking right over the piers, and the walk was full of water. Everything indicated there was a very big sea.

Q. Was the appearance of the lake unusual at that time?

A. It was very unusual. I considered it so.

Q. The wind was then blowing from the northeast?

A. Yes.

Q. During the 28th, what did you do in and about Duluth harbor?

A. Why, I went out and did the usual work in the harbor,—transporting boats and helping boats move.

Q. Did this northeast wind continue during the 28th?

A. Yes, all day. It seemed to increase all day.

Q. What observation did you make as to the effect of the storm in and around the Duluth harbor, if there—

A. We were unable to lay at our dock where we usually do. The seas were running over the top of the deck and the decks were breaking; there was too much sea running in there.

Q. That was inside the harbor?

A. Yes.

Q. Was that an unusual condition?

A. It was; although it does occur sometimes.

Q. Did you notice what effect this had on the trestles of the coal docks?

A. Not at that time, but I noticed the next day, that would be on the 29th,—I noticed the trestles were down on some of the coal docks, I think the trestles on the Clarkson dock, the original, the old Pioneer dock, were down. They blew down on the Steamer Champlain.

Q. Where was this coal dock situated with respect to the harbor front in Duluth?

A. I don't exactly understand your question.

Q. Is it situated on the harbor front, or some other place?

A. On the harbor front.

Q. And it is situated—

A. Also is a slip which runs into the dock.

Q. This coal dock on which this trestle was located extends from the shore out into the Duluth harbor?

A. Yes.

Q. And how far from the dock office, where your tug
165 usually—

A. It is probably about half a mile or three-quarters of a mile from the dock office.

Q. This trestle that you speak of as having been blown over, was constructed of what material?

A. It is a steel trestle designed for unloading coal from boats.

Q. How high a trestle was that?

A. I would estimate probably 75 feet altogether.

Q. And how long should you judge?

A. Probably 800 feet.

Q. You say this was blown over?

A. Blown down.

Q. Any other trestle works about the harbor blown over at that time?

A. Not that I observed, or that I remember of at least.

Q. What effect, if any, did you observe this storm caused on the piers of the Duluth canal, if any?

A. That would be on the 29th; I noticed some of the concrete blocks had been moved, and I hadn't noticed they had been moved previously; and I had concluded they had been moved by the storm,—one of them, at least.

Mr. Hill: I move that be stricken.

Q. How did the severity of this storm compare with other storms you have witnessed on Lake Superior as to the severity of it?

A. I would be perfectly safe in saying it was one of the most severe storms I ever saw here; not the most, but one of the most.

Q. Your experience here at the head of Lake Superior has been almost continuous for a period of 16 years?

A. Since 1888. That would be 27 years. I will say that I got off the tug that night to go home, but I couldn't get home.

Q. Which night was that?

A. The night of the 28th. I got off at six o'clock, and I got over here at the aerial bridge. They had stopped running the bridge on account of the severity of the storm and on account of the height of the seas; the seas were so high and they were afraid it would strike the bottom of the bridge and wet the motors—so they didn't run.

Q. How long were operations suspended by reason of the storm?

A. That I don't know. I got a bed at the hotel there at the canal; I don't remember the name of it.

Q. Some hotel near the canal entrance?

A. Yes. I went to bed there and didn't get up when the bridge started operations again, so I don't know.

Q. That was on the night of the 28th?

A. Yes.

166 Cross-examination.

By Mr. Hill:

Q. That is, the night of the 28th is when you went from your tug to the hotel?

A. Yes.

Q. You came back on the morning of the 29th?

A. Yes. I didn't go home at all that night.

Q. The storm seemed to increase in severity all day, the 28th?

A. I thought it was increasing; according to my judgment.

Q. It reached its maximum severity along about the evening of the 28th?

A. I judge so.

Q. And you told about the trestle blowing down on the Steamer Champlain; you don't mean that the full 800 feet blew down?

A. Yes.

Q. The full 800 feet?

A. Yes.

Q. And that extended?

A. Along the dock. The hoisting boom, of course, that was over the Champlain and fell on her.

Q. Do you know what time that occurred?

A. I do not.

Q. You only know that you saw it on the 29th?

A. Yes, that's all.

Q. And there was a northeast wind that was blowing?

A. Yes.

Q. And that wind, of course, blows right into the Duluth harbor?

A. Yes

Q. Is that a prevailing wind up here, or is it not? I mean, do your storms ordinarily include a northeast wind?

A. No.

Q. Which way do they come from?

A. We have as much storm from the northwest as from the northeast, and probably as much from the southwest.

Q. Then the northeast—you get your storms from three points?

A. The fact is that the northwest and southwest winds are of land; it doesn't affect the lake as much as the northeast winds. The storms that are dangerous to navigation in the vicinity of Duluth are the northeast winds.

Q. The water was high on the 28th and 29th?

A. Yes, very high.

Q. Can you give us an estimate of the amount or height of water?

A. About 2 feet I estimated; I didn't measure it.

Q. That occurs by reason of the fact that the northeast wind backs the water up in this section of the lake?

A. That's the reason.

Q. You weren't out on the evening of the 27th and
167 the morning of the 28th; you didn't stay up all night, that night?

A. No; the night between the 27th and 28th I didn't stay up.

Q. What time did you go to bed that night, the 27th?

A. Probably about ten o'clock.

Q. It was drizzling at that time?

A. Yes.

Q. The wind at that time hadn't reached the velocity it did the next day, the 28th?

A. No, I don't think so.

Q. What boats did you move with your tug on the 28th?

A. I really couldn't remember.

Q. Several of them?

A. I suppose we did. We did the ordinary work around.

Q. Do you recall any boats coming into the harbor on the 28th from across the lake?

A. I recall boats coming into the harbor. I couldn't say she came across the lake. The Minneapolis came in and she had lost her deck load of shingles, and pretty nearly lost herself; she came back in.

Q. Do you know about the Lakeport?

A. No.

Q. Or the Norwalk?

A. No.

Q. You have your storms in the spring and fall,—more sea than during the rest of the season?

A. We look for heavy storms then.

Q. Did you see any of the wreckage from the Steamer Noble?

A. I did; I judged it was from the Noble.

Q. What was it?

A. Hatches.

Q. Where were they thrown up?

A. Near my home.

Q. Are they still there?

A. I think not.

Q. Do you remember the storm that occurred about a month after this?

A. Why, I don't know as I can recall a storm about a month after that.

Redirect examination.

By Mr. Spencer:

Q. Do you recall, Captain, that on the night of the 27th, the Steamer Lambert also went out and did turn around and come back for shelter?

A. I think she came in after I went off watch. I heard of it, but I couldn't speak of my own knowledge.

Mr. Hill: Move that be stricken as hearsay.

168 CHARLES H. GREEN, a witness on behalf of the libellant, being first duly sworn, testified as follows:

Direct examination.

By Mr. Spencer:

Q. What is your name in full?

A. Charles H. Green.

Q. Where do you reside?

A. 1515 E. Fourth Street—Duluth.

Q. What is your age?

A. Forty-seven.

Q. What is your occupation?

A. Master and pilot.

Q. Of steam vessels?

A. Yes, sir.

Q. How long, Captain, have you led a sea-faring life?

A. Oh, I should judge about 32 or 33 years.

Q. The greater part of that time you have been in the command of harbor tugs, have you not?

A. Yes, sir.

Q. Do you recollect, Captain, the great storm that occurred on Lake Superior, at the head of Lake Superior, on the 27th or 28th of April, 1914?

A. I do.

Q. What tug were you in command of at that time?

A. Tug Minnesota.

Q. About when, if you remember, did that storm begin to manifest itself?

A. I noticed it on the evening of the 27th, but I was off watch all night of the 27th. I went down, I should judge, about six o'clock on the morning of the 28th.

Q. When you went down and resumed duty on the morning of the 28th, which way was the wind blowing from?

A. A gale from the northeast.

Q. Did you observe anything as to the condition of the sea at that time; how it was running?

A. There was a terrible sea on.

Q. Go on and state, if you will, what you observed as to the effects of the storm?

A. I went down to my boat at the foot of Seventh Avenue West or office dock, and there wasn't any of them there. They couldn't lie there; they were all along the lime-kiln slip. We had to go around there and get aboard of them.

Q. Was that an unusual condition?

A. Yes; it was washing the filling out in the facing of the dock, and it had driven in the dock office door during the night. The night watchman told me.

169 Mr. Hill: Move to trike that out.

Q. You saw the office door jammed in?

A. It wasn't jammed. The water had washed the door open. The water was on the floor.

Q. How high above the water level is the floor of your tug office?

A. I should judge about seven feet.

Q. How far is the tug office located from the Duluth canal? From the outer end of the Duluth piers?

A. Approximately 6,000 feet.

Q. How high were the waves, the seas, that morning, as compared with the tops of the Duluth piers?

A. The piers were buried part of the time.

Q. The seas were rolling right over the tops of the piers?

A. Yes.

Q. Did you notice what effect the heavy seas had on either one of the piers?

A. No, I didn't.

Q. You didn't observe that portion of the pier that was washed out?

A. No, sir.

Q. How, Captain, would you regard that gale,—as an ordinary gale?

A. It was extraordinary, in my opinion.

Q. Such a gale as very seldom occurs here?

A. Yes.

Q. Do you recollect of seeing the coal conveyor on the old Pioneer dock blown down at that time?

A. Yes, sir. It blew down across the Steamer Champlain.

Q. When did you observe that, Captain?

A. Along in the afternoon some time, of the 28th.

Q. Where is that coal trestle situated?

A. I should judge in the neighborhood of No. 300 Garfield Avenue.

Q. It was on the harbor front?

A. Yes, sir.

Q. Do you remember, Captain, of the fact of the Steamer Lambert going out of the Duluth harbor on the night of the 27th and turning around and coming back?

A. Why, not from my personal knowledge. I know she went out and came back, but I was off watch.

Mr. Hill: I move to strike that.

Q. Do you know of your own knowledge that she came back?

A. Yes, sir, I seen her laying in anchor the next morning.

Cross-examination.

By Mr. Hill:

Q. This so-called storm reached its maximum on 28th of April?

A. Yes.

170 Q. And the maximum velocity and wild as you observed it occurred some time during the close of the 28th, increased all day?

A. It was blowing a gale of wind in the morning when I came down at six o'clock.

Q. But the wind and the storm increased during the day?

A. I think it did.

Q. You said something about it having started on the afternoon of the 27th,—that was mere rain?

A. It was blowing northeast, and, of course, that is the start of a blow. I went off watch at about six o'clock on the night of the 27th; it was raining a little and blowing from the northeast.

Q. When the wind starts from the northeast in that fashion, do you expect a gale?

A. As a general thing. Not a gale, but you can expect some bad weather.

Q. And is that where your bad weather comes from?

A. That is the weather that punishes us at this end of the lake.

Q. Do you get the full sweep of the wind?

A. Yes.

Q. Of course in the harbor you get the full sweep coming from that direction?

A. Yes.

Q. The water rises on these occasions?

A. Yes, it always does.

Q. Some witnesses have stated that it rose two feet on this occasion?

A. We always figure on high water; never any danger of hitting the bottom of the channel when the northeast wind is blowing.

Q. You have seen the waves break over the piers on—

A. Yes.

Q. So that fact in itself is nothing unusual?

A. No. I think, however, that, in my opinion, the sea was bigger in that blow than it was at the time of the Mataafa storm.

Q. Do you remember the direction of the wind in the Mataafa storm?

A. Yes.

Q. What was it?

A. Northeast; only there was more snow,—heavy snow; that had a tendency to keep the sea down.

Q. You have your storms more frequently in the spring and the fall of the year?

A. The prevailing wind is northeast in the spring.

Q. And it is not unusual to have a gale or storms in the month of April, or the spring of the year?

A. We have some blows, but not as severe as that one; we had two very severe blows from the northeast last spring.

Q. What time did the second one occur?

A. I don't remember. It was some time after the first. I
171 would say, of the month of June. This first one we had, there was a man blown off the north pier along about ten o'clock in the morning; he was drowned. I don't think his body was ever found. He was running out to the outer end of the pier on a wager.

Q. That was on the 28th?

A. Yes.

Redirect examination.

By Mr. Spencer:

Q. You say you observed the heavy seas running over the piers?

A. Yes, sir. I saw the Lakeport when she came in that morning. I was watching her when she came in, and I think the Minneapolis.

Q. This thing occurred on the morning of the 28th?

A. Yes.

Q. Heavy seas—

A. I never saw any higher seas; the rain had let up a good deal. The rain has a tendency to knock the tops off the seas.

Q. Of course, the seas inside the harbor were not as severe as those out?

A. Oh, no.

Recross-examination.

By Mr. Hill:

Q. You say you saw the Lakeport come in?

A. Yes.

Q. She came in the morning of the 28th?

A. Yes.

Q. Do you remember what time?

A. It was early in the morning. I don't know whether it was before or right after breakfast.

Q. What time do you have breakfast?

A. Generally six o'clock.

Q. So it was in the vicinity of six o'clock?

A. Yes.

Q. Do you remember the Norwalk coming in?

A. No. I seen another one just before or after her; it may have been the Norwalk, or the Minneapolis—she lost her deck load of shingles. I don't know whether it was her or the Norwalk.

GEORGE EMERSON, a witness on behalf of the libelant, being first duly sworn, testified as follows:

Direct examination.

By Mr. Spencer:

Q. What is your name?

A. George Emerson.

172 Q. Where do you reside, Mr. Emerson?

A. No. 1108 Lake Avenue, south.

Q. What is your occupation?

A. Surf man, United States Life Saving Station.

Q. How long have you been engaged in the—

A. 19 years.

Q. Most of your time in the life saving employ has been at what place?

A. At Duluth.

Q. Do you remember the storm, Captain, during which it is supposed the Steamer Noble was lost?

A. I do remember, yes, sir.

Q. Whereabouts is the life saving station at Duluth situated?

A. It is situated about two-thirds of a mile south of the aerial bridge.

Q. And that is practically on the shore of the lake, is it?

A. The main station is practically on the lake shore.

Q. What was your duty, what did you do, during the night of the 27th of April, if you remember?

A. I couldn't tell you. I could tell you what I done if I knew what morning that wreck occurred. The morning I picked that wreck up on the beach.

Q. That was the 28th.

A. The 27th I had gone off watch at four o'clock.

Q. So you went on duty at four o'clock on the 28th.

A. Yes.

Q. When you came on duty, what was the condition of the weather?

A. Well—it was kind of a sleet,—northeast gale.

Q. What direction was the wind blowing?

A. Northeast.

Q. How was it blowing at the time?

A. It was blowing a gale, about 45 or 50 miles an hour.

Q. From your long experience you have had as a surf man, are you able to form an opinion as to the velocity of the wind?

A. No, not exactly. I would have to guess at it; that's all. What we hear. Of course, I should judge it was about that. Of course,

I have been quite a while in the service, and have seen a good many gales.

Q. From the experience you have had with wind and water, are you able to form some reasonably accurate idea of the velocity of the wind?

A. I should judge about 45 or 50 miles an hour.

Q. What can you say of the sea that was running at the time when you came on duty on the morning of the 28th?

A. It was a very heavy sea.

173 Q. Unusually heavy?

A. Yes.

Q. What was the first thing you did on the morning of the 28th?

A. I went into the watchhouse on the lake side and kept watch there, and I don't know as you want me to tell you all I did.

Q. Go on and state what you did.

A. Along about 5:45 I discovered a steamer coming in down on the lake, about 18th Street; when she came into the breakers there she threw off some of her shingles. That was the Minneapolis. She got back up out of that and came into the Duluth piers. And, also, there was another steamer during that time. It was a little later; it was the Davidson that came in almost the same place and went back.

Q. Did you patrol the beach any on the morning of the 27th?

A. We patrolled it down to the canal and back that morning; but I did not patrol it until the 29th.

Q. On the morning of the 28th, give some idea, if you can, how high was the sea running with respect to the canal piers, the top of the lighthouse, or anything else?

A. It was running right over the piers, and filling in between the concrete blocks, going somewheres from 40 to 45 feet over the outside lights.

Q. How long have you been in the service here in Duluth?

A. Nineteen years.

Q. During those nineteen years, did you ever observe the sea running any higher than it did that time?

A. Well, I have seen it run a little higher on the beach, but I never seen any heavier, to my knowledge, or any worse storm for boats to be out on the lake.

Q. It was an unusual storm.

Mr. Hill: Object to the attorney putting words into witness' mouth.

A. It was unusual.

Q. Were you on duty on the 28th?

A. No, I was not.

Q. Did you at any time find any wreckage along the shore?

A. Yes, sir, I did. The first wreckage I found was about 17th Street,—hatches.

Q. When was that?

A. The morning of the 29th.

Q. How far from the Duluth canal is 17th street where you found this wreckage?

A. That's about two-thirds of a mile.

Q. What direction?

A. South.

Q. That would be south from the canal?

A. Yes, sir.

174 Q. What wreckage did you find there?

A. I found hatches.

Q. Anything else?

A. I walked down the beach; I found broken oar blades, Steamer Noble on it; life preservers and life rafts, lines and everything like that.

Q. Those were all marked Steamer Noble?

A. Yes, I seen Steamer Noble on the hatches and on the life rafts.

Q. What direction was the wind at that time?

A. Northeast.

Q. How far along the beach did this wreckage extend?

A. To my knowledge it was three miles and a half; that was my patrol.

Q. Was this wreckage distributed all along these three miles?

A. From 17th street down to—at least $3\frac{1}{2}$ miles.

Q. What further investigation did you make that day, or the following day, with regard to the loss of the Steamer Noble?

A. Well, sir, I went out into the lake with a life boat. I should judge we went twenty miles down the lake, and we found wreckage ten miles down the lake, —northeast from the station.

Q. When did you leave the Duluth harbor on that expedition?

A. It was in the morning, I should judge, about nine o'clock.

Q. Of what day?

A. That was the 30th.

Q. Whereabouts did you find the first wreckage, where was the first wreckage that you came to after leaving Duluth harbor?

A. That would be about ten miles down the lake.

Q. What did you there find?

A. We found a piece of a panel of a door, I should judge, and a piece of the hatch, or the strong back; it was a piece of the hatch.

Q. Were there any marks or other things to identify it?

A. Nothing on that.

Q. Did you find any wreckage floating marked with the Steamer Noble?

A. Not that day, no, sir.

Q. At what point of the shore was the place where you found the wreckage in the lake on that trip up to the——

A. It would be about half way between the north and the south shore,—about ten miles due northeast.

Q. And about how far out from the north shore?

A. It would be about $3\frac{1}{2}$ miles to 4 miles.

Q. You say you found a panel, a door panel?

A. Yes, sir, just a piece. We know very well it was off the Noble, by the other wreckage that we picked up.

175 Q. Was it painted?

A. It had been varnished, kind of a green tinting.

Q. What other effects around the Duluth harbor did you observe which go to show the severity of the storm if you remember?

A. It really didn't effect us very hard where we were; that is, nothing that I could see there,—only the water being high; two feet higher than usual, the sea being very heavy.

Q. Did you notice what effect the storm had on any of the coal docks?

A. No. I seen this coal dock down that they were speaking about.

Q. Which one did you see blown down?

A. The old Pioneer dock, the Philadelphia & Reading, I think; I seen that from the watch house, and also seen it when I was across the bay.

Q. On what day?

A. I couldn't remember that exactly. I seen it later on anyway.

Q. It was either the 27th or the 28th?

A. It was either the 30th or the 31st.

Cross-examination.

By Mr. Hill:

Q. You mean that it was the 30th or 31st that you saw this trestle down?

A. Yes, sir.

Q. You didn't see it on the 27th——

A. No, sir.

Q. Whereabouts is your station in reference to the Duluth canal light and fog whistle station?

A. It would be almost due south.

Q. And you found this wreckage further south than that, did you?

A. Yes, sir, I did a little, very little,—two or three blocks.

Q. You found that on the morning of the 29th?

A. Yes.

Q. What time in the morning, Captain?

A. About 8:30 I should judge.

Q. And what time was it you observed the Minneapolis and some other steamer making the canal?

A. That would be about 6:15 it was 5:45 when I seen them coming in on the beach.

Q. Coming in towards the beach?

A. Coming in very close to the beach. Threw off some of her shingles, the Minneapolis did.

Q. What time did you go on watch the 28th?

A. At four.

Q. You had been off watch previous to that?

A. I went off watch at eight o'clock, and——

Q. That is eight o'clock the night before?

176 A. No, eight o'clock the next morning I came off watch. I was on watch at four o'clock and I came off watch at eight.

Q. What time did you go off watch on the 27th, prior to your coming on watch the morning of the 28th?

— I watched in the day time on the 27th.

Q. Up to what time?

A. To about four.

Q. Then you were off from four o'clock on the 27th until four o'clock on the 28th?

A. Yes.

Q. The wind increased during the 28th, didn't it?

A. Yes.

Q. And the storm reached its maximum velocity sometime late on the 28th?

A. Yes, sir, just about.

Q. You said on the 30th you took a boat and went out?

A. Yes, sir.

Q. Which way did you go from your station, north or south?

A. We went out through the piers, that would be northeast down the lake.

Q. And you found that wreckage towards the north shore?

A. Yes, it was closer to the north shore than to the south shore.

Q. You get the full sweep of the northeast gale in that vicinity?

A. Yes, we get the full length of the lake.

Q. And it is as bad in your vicinity as it is anywhere on the lake?

A. Yes, it is.

Q. And a vessel over in the vicinity of the north shore, in the proximity of Knife Island, would have some benefit of the north shore in a northeast gale?

A. I doubt if she would have. She would have some, but very little. Kind of a black sea; she would have some shelter from the sea.

Q. You have your storms in the spring of the year—spring and fall?

A. Yes, we do.

Q. That's when you expect them?

A. That's when we have the heaviest storms, spring and fall.

Q. When did navigation open up here at that time?

A. 23rd we opened, and I think that's about the time navigation opened; 23d of April.

Q. What was done with the wreckage that you recovered from the Noble?

A. Well, a boy by the name of Weston had the life raft. I picked up a piece of one of the oars, and because the Steamer Noble was on the blade, I wanted to keep it, because I reported the wreck.

Q. What has become of the life raft?

A. I don't know.

Q. You have seen seas breaking over the piers before?

A. Yes, sir.

Q. You have seen the water rise before?

A. Yes.

177 Q. Frequently does in a northeast wind?

A. Yes, always does in a northeast wind.

Redirect examination.

By Mr. Spencer:

Q. The oar was marked "Noble" you say?

A. Yes.

Q. What other stuff did you find that was marked "Noble"?

A. The life belts and the oars; I found two blades of the oars, and I took one of them with me. They were both marked "Steamer Noble."

WILSON PALMER, a witness on behalf of the libelant, being first duly sworn, testified as follows:

Direct examination.

By Mr. Spencer:

Q. What is your name in full?

A. Wilson Palmer.

Q. Where do you reside?

A. At Lakewood, Minnesota.

Q. How old are you?

A. Fifty-eight.

Q. What is your occupation?

A. Mechanical engineer.

Q. What is your line of business,—what particular concern are you now employed with?

A. I am chief engineer of the city's water works.

Q. Where are the water works of the City of Duluth located?

A. Lakewood, Minnesota.

Q. How far from the City of Duluth?

A. About nine miles, more or less.

Q. Down the lake?

A. Yes, from the union depot here, according to mile post.

Q. On the north shore of Lake Superior?

A. Yes.

Q. How long have you been in charge of the Lakewood pumping station?

A. About sixteen years.

Q. How long have you lived at Duluth?

A. About thirty-three years.

Q. Do you remember the storm that took place at the head of the lakes on the 27th and 28th of April, 1914, the time when the Noble was said to have foundered?

A. Yes, sir.

Q. Where were you at that time?

A. I was at the water works, as usual, at my work.

Q. What direction was the wind from?

A. As near as I can recollect it was—I would judge by the way the waves were coming in, from the northeast. Being on the lake shore all the time you don't pay attention. If

you were looking at it and think about it afterwards you would look particular to see, but as near as I can recollect it was that direction.

Q. What can you say as to the height of the seas running at that time?

A. That's something that would be pretty hard for me to estimate. I know it was a very, very violent storm.

Q. Was it anything unusual?

A. Yes. In fact I made a note of it, that it was greater than any we have had in years. In fact, I don't know if we ever had a worse one.

Q. Have you any recollection now of a worse storm prevailing during the 33 years you have lived in Duluth than that which occurred at that time?

A. No; only that other storm, that big storm of November 28th, when a large number of boats went ashore,—a number of years ago; that would be about the only one that I know and could compare with it.

Q. You refer now to what is known as the Mataafa storm?

A. Yes, that's the only one that I know of that could compare with it.

Q. When did the storm reach its height, as you recollect?

A. I just don't know exactly; it would be in the night, I presume sometime.

Q. Of the 27th or the 28th?

A. That would be the evening of the 27th, the storm would be the worst, because in the morning of the 28th there was still a terrific sea.

Q. You made a memorandum at the time, Captain, of the severity of the storm?

A. Yes.

Q. What effect did this have on your pumping station, Mr. Palmer?

A. The storm was running down along after dinner on the 28, a terrible sea was running in even at that time, but the wind had gone down, but, of course, the morning of the 28th it was very bad, and along after dinner there were a lot of shingles coming in along the shore. Some of the men drew my attention to it. I looked at it close and saw a boat had lost her deck load of shingles, and they were coming up along the shore, and I went down and looked at them coming in, and telephoned to another man putting a building up there to have him bring his men down, and probably he could get a lot of shingles; and about the same time the engineer who was on

watch was complaining that we couldn't get any water, and I
179 went down below. The pump was making a terrible noise for the amount of water. We have large copper screens that slide down in front of the intake pipe and they were all clogged up with foreign material washed in from the shore, that the water couldn't pass through, and they bulged out like baskets. I thought they were going to break with the terrible pressure, about 23 feet ahead,—the well was about that deep—and the screens had to sustain that pressure; so we had to stop the pump. I recollect I was

very anxious to go and salvage some of those shingles, but I couldn't leave.

Q. How far does your pipe extend into Lake Superior?

A. 1500 feet.

Q. What is the depth?

A. 65 feet below the surface. And this material was vegetation from the shore. The sea was so high that it would wash up and it would even take some of the embankment.

Q. Do you mean to say that this stuff and weeds wa.^a taken in at the outer end of the intake pipe?

A. Yes, it was all from the shore,—weeds and grass that was broken from the shore, and some of what found its way into the intake pipe.

Q. At the outer end of it?

A. Yes. Sure it had to come in at the outer end of it; it is absolutely tight, a steel pipe sixty inches in diameter, and a big, large crib built over the end of it, secured in its place by rock.

Q. How long did that storm continue?

A. I don't know just about the beginning of it. It seems to me it was a short storm, from my recollection; that it started running down about noon. The wind went down, so it was almost a perfect calm, because those people came down there, and before night they were successful in getting those shingles,—several hundred bunches of them secured.

Q. Did any wreckage of the Steamer Noble come in to—

A. No.

Cross-examination.

By Mr. Hill:

Q. Where is your pumping station, Mr. Palmer, in reference to the Duluth canal lights; that is, north or south?

A. It would be northeast of Duluth. Have you a map there?

Q. Yes, I have. Perhaps, you can point out—

A. It is at Lakewood, right here on the map (indicating).

Q. As a matter of fact, Mr. Palmer, you are a little confused on the dates, when this storm was at its height was on the 28th?

A. Oh, no; the storm, the greatest part of it, at its height would be in the night.

Q. Were you on duty at night?

A. No, but I live right there.

Q. You know nothing about what occurred at night?

A. No; nothing what occurred on the lake shore; there was nothing occurred.

A. We keep no records of velocity.

Q. Were you in bed on the evening of the 27th?

A. Oh, sure.

Q. What time do you go to bed?

A. Somewhere around twelve o'clock every night.

Q. What time do you come on duty again the 28th?

A. About eight o'clock.

Q. So what do you know about the storm,—your own personal knowledge, occurred from eight o'clock on the morning of the 28th?

A. That is, the effects of the storm?

Q. That is what you saw of the storm?

A. Of course, I live right there on the lake shore. I would know it was a terrific storm, but I didn't know anything about the effect of it until the next day.

Q. So that the storm itself that you know about, occurred on the 28th?

A. Well, now, hold on; that ain't right. I know there was a terrific storm during the night; I certainly do.

Q. What time did it start during the night?

A. I don't know. I can't tell you, but I know during the night there was an awful storm. You can't live on the lake shore and not know it.

Q. Did you hear the wind blowing?

A. I should say so; and the waves were washing up; you can't live there and not hear them and know of them.

Q. Do you hear that right along while there is a storm?

A. If there is a violent storm; but if there is a very bad one we do pay attention to it.

Q. How frequently do you?

A. Just as frequently as there is a big storm.

Q. How frequently do they occur?

A. I am telling you this is the worst one I ever saw.

Q. Do these occur half a dozen of times or more during the year?

A. That other big storm I spoke of was during the fall.

Q. I mean storms that draw your attention?

A. No. It might go years and not see any such storm as
181 that. You see, I have to walk right along the lake shore to go to my home, and we see the waves. You can't do anything around there but you see it all.

Q. How frequently do you see these storms that draw your attention?

A. I don't know how to answer that question. I explained. We see them all, big or little. You can't work around on the lake shore but what you see them all,—without any exception.

Q. You know nothing about the extent of this storm, except that you know there was one?

A. Yes, and a very violent one.

Q. You were not out on the night of the 27th?

A. No, nothing only doing chores. You don't have to be out to hear it.

Q. You came out on the morning of the 28th?

A. Yes.

Q. And the wind was blowing hard?

A. In the forenoon, yes. It began to die away then.

Q. It began to die away during the day of the 28th?

A. Yes.

Q. And was a calm during the day of the 28th?

A. Yes, it ran right down towards evening, but there was still a terrific sea coming in.

Q. But the wind had subsided?

A. Yes.

Q. A four or five mile wind?

A. That isn't very much of a wind.

Q. But the gale had stopped blowing?

A. Yes, it was one what we call a "dead swell" coming in. Along in the afternoon—and gathering these shingles—men and women both were taking shingles when they were coming in. They gathered in several hundred bunches of them, so you can see—

Q. What about the 29th; what was the condition of the weather on the 29th?

A. I don't know anything about that.

Q. Did you make any memorandum of it?

A. No.

Q. Did you make any memorandum of the 27th?

A. No.

Q. So the only memorandum you have was made on the 28th?

A. Yes, sir.

Q. When was that memorandum made?

A. Made that day; the 28th of April.

Q. Have you made memoranda of any other storm?

A. Yes, but I haven't got the books. I have kept these diaries for the last fifteen or sixteen years.

Q. How many memoranda of storms have you made each year?

A. I don't know whether I have another one made.

182 Q. Did you ever make one before?

A. Anything of exceptional—just like yourself, anything exceptional going on you make a note of it.

Q. Did you ever make a memorandum of an exceptional storm up here before?

A. I am not positively sure about it that I have, but I fear that I have.

Q. How many times have you done that?

A. I don't know. I wouldn't tell you that I have once before that.

Q. What is your best recollection, that you have or that you haven't?

A. I am almost sure that I have.

Q. Was that during the spring of the year or the fall of the year, or when, that these other storms occurred?

A. That other one was in November, I think,—the 28th.

Q. Did you ever make any memorandum of exceptional storms in the spring of the year?

A. I don't know; I can't particularly recollect now.

Q. You don't recollect any, but you have made a memorandum of this?

A. No. Of course, if I had, I would feel just like looking it up. You see, I make out a report of the business, the pumping station, and I make a note on those—a daily report that is sent in once a

month to the water office; and quite often I make a note on there.

Q. That is where you have your memoranda of storms?

A. No. I say, maybe I put something on those. I know I have, but I know in this case it was put on this book.

Q. Did you put this on your report?

A. No, not to send in to the water office. I fill out a report for the water office, and then I make a lot of remarks and note things that will be useful to myself; on my copy, but it is not material for the water office. Then I copy this report,—one to send in to the water office and one for myself; but I omit that from the other one.

Q. Was it snowing or sleeting at all on the 28th of April?

A. No, there was nothing.

Q. No snow or sleet?

A. Not in the afternoon. There might have been the night before, but not during daylight.

Q. There was not at daylight during the 28th—

A. Let me see. I am just trying to recall if there wasn't something in the forenoon, too. Say, I think it was a rain.

Q. You think it was raining?

A. It seems to me it was.

183 Q. What time of the day did the wind reach its highest velocity on the 28th—when did it blow the hardest?

A. I don't know whether it reached its highest velocity—that's the date I have given you that these shingles was coming ashore. I should judge it was somewhere around noon. I know in the afternoon the wind was dying all the time.

Q. So it got to this so-called calm?

A. The sea was running down for a day or two afterwards. It couldn't run down in one day.

Q. But the wind had gone down?

A. Dead swells running up for two or three days afterwards from that same storm.

Redirect examination.

By Mr. Spencer:

Q. How close to the edge of Lake Superior is your pumping station located at Lakewood?

A. About twenty feet.

Q. Had your intake pipe ever been troubled with weeds coming into it on any other occasion except this storm?

A. Once we had some foreign material come in there, and that was at that other great storm.

Q. At the Mataafa storm?

A. Yes, that's the only other time that we were bothered that way.

Q. Did it come in bad enough during the Mataafa storm to require you to shut down?

A. No, we weren't obliged to shut down the pumps at that time. I think the following day, or a day or two afterwards, we cleaned

the well out; it was bothering us,—what they call the foot valve. There is a screen over that and that became clogged.

Q. Mr. Palmer, I hand you herewith Libellant's Duluth Exhibit "1," signed by Gretchen F. Roecker, and I will ask you if that is the memorandum you made in your diary of the 28th day of April, 1914, concerning which you have already testified?

A. Yes, sir. That was written that same day; that's my own handwriting.

Mr. Spencer: I offer in evidence Libellant's Duluth Exhibit "1," signed by Gretchen F. Roecker.

Mr. Hill: We object to it as self-serving, incompetent, irrelevant and immaterial. We object to it unless the whole book is offered in evidence.

Exhibit "1". "Tuesday, April 28, 1914. Fierce N. E. Storm Worst in several years."

184 Recross-examination.

By Mr. Hill:

Q. Did you make this clipping from the book?

A. No, Mr. Spencer asked me— He was looking up the storm and I came in here and I looked up my reports, and when I ran across this he said, "I wish you would give me that; let me have it." I said, "Yes; that's of no use to me; that's of no value to me;" and took it out of the book. You have the whole history of that thing.

Q. I note that there are a great many days that no memorandum appears at all.

A. I don't make any memorandum in connection with the lake or anything of that kind, or you wouldn't either, without you had something exceptional.

Q. I also note that there is no memorandum for Monday, April 27th, 1914?

A. No. It's after these things occur that I usually mark them down.

Q. When was the entry under the heading "Wednesday, April 29th" made?

A. This was put there when I cut that out and gave it to Mr. Spencer, so that I would know what belonged in there.

Q. Then you made no original memorandum for Wednesday, April 29th?

A. No, sir. It would be there if I had. You see I put that "28" there so it would refer to the place above. I never looked the book up to see if there was anything in regard to storms. Quite often I mark the temperature, or something of that kind; and then everything is abbreviated in a diary.

Q. Did it rain or snow or sleet or anything of that sort on the 27th of April?

A. I have forgotten that part of it.

Q. You don't recall?

A. I couldn't tell you that; you can get that information from

the weather man; I can't tell you; only I know it was a very violent storm, but as regards rain, sleet or hail, I couldn't tell you that.

OTTO REDMAN, a witness on behalf of the libellant, being first duly sworn, testified as follows:

Direct examination.

By Mr. Spencer:

Q. Your name is Otto Redman?

A. Yes, sir.

Q. Where do you reside, Mr. Redman?

A. Two Harbors.

Q. How old are you?

A. Fifty-three.

185 Q. What is your occupation?

A. Lighthouse keeper.

Q. At what place?

A. Two Harbors.

Q. How long have you been in the lighthouse service of the United States?

A. Twenty years.

Q. How long have you been stationed at Two Harbors?

A. Four years.

Q. Where were you stationed prior to going to Two Harbors?

A. Fort Gratiot, Lake Huron.

Q. How long were you stationed at that place?

A. Ten years.

Q. How near the shore of Lake Superior is your lighthouse station located at Two Harbors?

A. Well, it's about one hundred feet, one point.

Q. How many lights do you have there?

A. We have two.

Q. The one is located on——

A. On the breakwater.

Q. And the other is located where?

A. On shore.

Q. In what direction does the breakwater run from the shore?

A. Why, it runs about west by south.

Q. And how long is that breakwater?

A. It's about 700 feet or more.

Q. And is there a light at the outer end of the breakwater?

A. Yes.

Q. How high above the lake level is your shore lighthouse, the top of it?

A. It is 76 feet to the focal plane.

Q. Do you remember the storm of April 27th and 28th, at the time when the Steamer Noble is said to have foundered?

A. I do; yes, sir.

Q. What direction was the wind from at that time?

A. It was about northeast by east.

Q. Practically northeast.

A. Little east of northeast.

Q. What time did that storm begin, as nearly as you can remember, on the 27th or 28th?

A. I don't remember the date, and I don't remember just when it began, either.

Q. Do you remember whether you were on duty during the night of the 27th and 28th or not?

A. I was, yes.

Q. What can you say as to the velocity of the wind at that time, during the nights of the 27th and the 28th?

A. I couldn't tell what the velocity of the wind was.

Q. Was it blowing hard or not?

A. Very hard.

Q. East by northeast?

A. Yes.

Q. What was the condition of the sea at that time?

A. There was a heavy sea.

186 Q. Could you give any idea how high the seas were?

A. No; it was higher than it has been during the four years that I have been at Two Harbors.

Q. You have never seen as high a sea as it ran the night of the 27th and 28th?

A. I couldn't say. It was the night the Mataafa was wrecked I know.

Q. Well, the first night of the storm, as I understand you, the sea was running higher than at any time you had been at Two Harbors?

Mr. Hill: Objected to as leading, suggestive.

A. Yes.

Q. Could you give any idea as to the height of the seas as compared with the breakwater running out from the shore from the lighthouse?

A. Not any more than they were running over the breakwater.

Q. How high from the surface of the lake is the top of the light tower on the outer end of the breakwater?

A. 48 feet.

Q. And with respect to the top of the outer light, how high did the seas come?

A. Oh, they didn't come very high on the light.

Q. That was sheltered somewhat?

A. The place where the light is is four feet higher than the other.

Q. With respect to that outer lighthouse tower, could you give any idea of the height of the seas as compared with that?

A. No.

Q. Did you see any vessels off your lighthouse out in the lake that night,—the night of the 27th or 28th?

A. Yes; saw some lights.

Q. How many vessels were there?

A. Why, there was two that I remember.

Q. Do you know what vessels they were?

A. No, I don't.

Q. What were the movements of these vessels if you remember?

A. There was one that came in there about half past eleven, steering about due west.

Q. If it continued on that course, where would she have gone?

A. It would have run in at the point of the lighthouse.

Q. How far out was this vessel?

A. About two miles.

Q. Could you tell anything of the rig of the vessel?

A. No, not any more than it was a steamer.

Q. Could you give any idea of its size?

A. Judging by the lights it was a short vessel.

Q. She at that time appeared to be heading in on a point where your lighthouse is located?

A. Yes.

187 Q. When did you do when you saw that?

A. Why, I started the fog whistle to warn her off.

Q. Had you been blowing your fog whistle before that?

A. Yes, prior to that.

Q. And what did the vessel do after you began to blow your horn?

A. Well, she steered for about Duluth.

Q. What did you observe about its lights, as to what lights it carried?

A. Well, I thought first it was our boat, the Amaranth.

Q. The lighthouse tender?

A. Yes. I called the assistant about that time, at twelve o'clock, and told him that I thought it was our boat, and thought probably she would come in there the way she acted.

Q. The last you saw then, of this steamer, it was heading for Duluth?

A. No; she turned around after she had run that way for about twenty minutes or half an hour; then she turned around and came in, right straight for the lighthouse.

Q. What did you do then?

A. I started the whistle again to warn her off.

Q. What effect did that have?

A. She turned around again and turned towards Duluth.

Cross-examination.

By Mr. Hill:

Q. Captain, you said you didn't recall these dates particularly, the 27th and 28th?

A. No; not unless I looked up my journal.

Q. During the month of April, covering the 25th to the 30th of April, 1914, were you on night duty or day duty?

A. Night duty.

Q. What time did you go on?

A. Six o'clock in the evening.

Q. And you went off duty what time?

A. At twelve o'clock.

Q. As a matter of fact, this storm reached its maximum on the 28th, the second day?

A. No, I think it was the highest about twelve or one o'clock that night.

Q. Wouldn't that be twelve or one o'clock of the 28th, and on the 29th the storm went down?

A. It would be the night the Noble was wrecked; about the time she tried to get in there—whatever boat it was—I wouldn't say; it was a short boat like her.

Q. Do you know that the Steamer Norwaulk was out there in that vicinity at that time?

A. No.

Q. And also the Steamer Lakeport?

A. No.

Q. You went off duty at twelve o'clock?

188 A. I stayed up until about one o'clock that night, watching that steamer.

Q. Where did you go then?

A. Went to bed.

Q. You didn't come on again until the morning?

A. Six o'clock in the morning.

Q. When you came on duty again there were no boats that you could see?

A. No, sir.

Q. The wind was still blowing hard?

A. Yes.

Q. And continued to blow hard until noon of the 28th?

A. Yes, later.

Q. Now, the night before,—the day preceding your seeing these vessels, it was drizzling?

A. Little snow flurries.

Q. The last you saw of this boat, she was headed for Duluth?

A. Yes, the last I saw.

Q. Did you see her go down out of sight?

A. No.

Q. You watched her until you couldn't see her?

A. No, I saw the lights, and I told the assistant to watch her, and I said at one o'clock, "I guess I will go to bed," and I said, "If it starts to snow, you start the signal, so she will know where to come in."

Q. But the last you saw of her she was heading for Duluth?

A. Yes.

Q. You saw her range lights?

A. Yes.

Q. Was she to the west or east of you at this time?

A. She was about south by west of us.

Q. About how far out?

A. She must have been out about two miles when I saw her last.

Q. You said you saw the lights of two boats?

A. Yes.

Q. Was the smaller one to the west or to the east of the larger one?

A. The other one was further out, headed for Duluth; there were lights further apart. She must have been out six or seven miles.

Q. And you judge from that that she was a larger boat?

A. Yes.

Q. You know nothing about the velocity of the wind; you have no instruments up there for detecting velocity?

A. No, not any more than I know it was blowing heavy.

Q. During the four years you have been there you have had your storms and gales during the spring and fall of the year?

A. Yes.

Q. So you expect them at that season of the year, is that right?

A. Yes, sir.

Q. Now, right in there you get the full sweep of Lake Superior with a northeaster?

A. Yes, we do. There was a kind of a back set in there.

189 Q. You frequently, in gales up there, have the seas break over your breakwater?

A. Yes.

Q. And the sea runs pretty high?

A. Yes, sir.

Q. How far is the chartered course from Duluth for observing vessels making Duluth lights,—as they go past—

A. Along the north shore.

Q. Coming past the Apostle Islands?

A. Of course, out there it is about twelve miles from us.

Q. You can see the boats and lights?

A. Yes, you can see clear across on a clear day.

Q. Some of the boats take a course closer in to you?

A. The boats that come for shelter for a northeaster generally follow up that shore.

Q. They get some protection from the north shore?

A. Yes.

Q. And you frequently have seen boats come in there and run that course for northeast gales?

— Yes, invariably.

Q. What are your lights,—are they red?

A. The pier light is a red light and the land light is a white flash.

Q. What are the intervals?

A. Two flashes of five seconds and a white light of ten seconds.

Q. Before coming here you were down at the rapids, at Port Huron?

A. Yes.

Q. What is a distance from a point outside the Two Harbors light to the canal, Duluth canal, or pier light?

A. Why, it's about twenty-five miles and three-quarters on the course; either twenty-five or twenty-six.

Redirect examination.

By Mr. Spencer:

Q. How close to your shore lighthouse is your residence?

A. It's right at the light.

Q. The light tower and the lighthouse keeper's home all one?

A. Yes.

Q. To the best of your judgment what was the velocity of the wind when you left your station at one o'clock that night, the first night of the storm?

A. I should think it was blowing sixty-five or seventy miles.

Recross-examination.

By Mr. Hill:

Q. That is simply a guess?

A. Oh, yes, we have no wind instruments.

Q. You reached that conclusion because you thought it was blowing harder than ordinarily?

A. Yes.

190 Q. You have had, during your four years up there, gales very nearly approaching that, but not quite as severe?

A. Yes, but not quite as severe. The seas ran over the piers that night, mostly every sea, where they didn't before.

Q. You mean broke over the piers?

A. Yes.

WILLIAM HARRY RUEL, a witness on behalf of the libelant, being first duly sworn, testified as follows:

Direct examination.

By Mr. Spencer:

Q. What is your name in full?

A. William Harry Ruel.

Q. How old are you?

A. I was 29 last March.

Q. Where do you reside?

A. Two Harbors.

Q. What is your occupation?

A. Lightkeeper, assistant lightkeeper.

Q. How long have you been in the lighthouse service of the United States?

A. It will be two years this coming April.

Q. And during that whole time you have been stationed at what place?

A. Two Harbors.

Q. Do you remember the storm that prevailed on Lake Superior during the 27th and 28th of April, 1914, commonly known as the storm when the Steamer Noble foundered or was lost?

A. Yes.

Q. When did you come on duty that night?

A. Twelve o'clock midnight.

Q. That would be the night of the 27th or 28th? Either night?

A. Yes, sir; we were only two then.

Q. What direction was the wind from at the time you came on duty that night, the 27th?

A. It was northeast by east.

Q. And what can you say as to the severity of the wind?

A. It was a very high wind.

Q. What about the sea that was then running?

A. It was a high sea rolling.

Q. Could you give any idea of the height of the waves, as compared with the top of your outer lighthouse—how high did they come?

A. Came up 10 or 15 feet on the breakwater, because it went clear over the breakwater,—the highest I have ever seen since I have been there.

Q. How high is the breakwater above the lake level?

191 A. When the water is calm, I should judge five or six feet. I never measured it.

Q. Then on the top of the breakwater is the tower of the outer light?

A. Yes.

Q. And how high from the top of the outer light tower?

A. I should judge ten or fifteen feet.

Q. Did the storm increase some during the night?

A. Well, I suppose it was at its highest between twelve and two, and then I think it moderated on the 28th.

Q. How long have you lived at Two Harbors?

A. It will be—keeping house it will be two years since June.

Q. Where was your residence before?

A. In Michigan.

Q. Did you come up to Two Harbors with the lighthouse keeper?

A. No, I came the 28th of April, two years ago.

Q. During the time you have been at Two Harbors, have you known of any storm of the severity that this one was?

A. No, sir.

Q. Did you see any vessels off Two Harbors that night?

A. Yes, sir.

Q. How many did you see?

A. Well, I don't remember seeing any, that is, in the early part of the evening; but the keeper drew my attention when I came on watch at twelve o'clock.

Q. How far out was this vessel at the time?

A. I couldn't tell positively how far it was; it was blustering and snowing, but I should judge within a quarter of a mile; and then it came closer within several blocks.

Q. Was it a steamer?

A. I don't know whether it was a steamer.

Q. What kind of lights did it have?

A. Port and starboard lights, red and green lights.

Q. Did it have mast lights?

A. Yes.

Q. Did it have range lights?

A. Yes; must have been a steamer.

Q. From the appearance of the lights, was it a large vessel or a small one?

A. It seemed like a medium sized vessel; it didn't seem like a large steel boat.

Q. What were its movements when you first noticed it?

A. It headed right for the fog signal when I seen it, coming in from Duluth about southwest, going northeast; heading northeast under the fog signal light.

Q. Did it appear to be coming from Duluth?

A. Yes.

Q. What did it do when you saw it coming?

192 A. The keeper drewed my attention to it as soon as it came, and it was heading in there, and it came right up to the breakwater. He said "it will run into the breakwater." They came right in close; that was between twelve and one o'clock. He stayed up until it turned out, and then it turned south, heading into the lake; and then the keeper retired; and then I seen it about one again and then it headed towards the east, about southeast from the lighthouse then, and I watched it until 1:30.

Q. Was there anything about it that enabled you to tell what vessel it was?

A. No, I couldn't tell; I could just see the lights.

Q. Was it upbound or outbound?

A. It was upbound; I noticed the lights east.

Q. When you first saw it, you say it looked as if it were coming from Duluth?

A. Yes.

Cross-examination.

By Mr. Hill:

Q. That was your first spring there, Mr. Ruel?

A. No, that was my second spring.

Q. You came there in 1913?

A. Yes.

Q. What date?

A. 28th of April; I was sworn in then.

Q. Had you been in the service before?

A. No, sir, I was in the navy.

Q. That is, on the coast?

A. On the ocean.

Q. You have a rock harbor there at Two Harbors?

A. Yes, sir.

Q. Guarded by breakwaters?

A. Yes.

Q. What is the width of the harbor entrance?

A. I never measured it.

Q. Three or four feet, or more?

A. It is all of that.

Q. How much is it?

A. I don't know for sure. I never did inquire, and never was told.

Q. What is your estimate from seeing it? A thousand feet?

A. I should judge all of a thousand feet.

Q. This vessel you saw off your light turned around two or three times while you were watching it?

A. It turned around two different times while I was seeing it.

Q. When you first saw it she was headed in the direction coming from Duluth?

A. Yes.

Q. And finally you saw her headed for Duluth?

A. She headed out; I don't know where she—I seen her turn when she came towards the breakwater, and then she headed out, and then Mr. Redman retired. When she headed out, then I seen her turn east, and you couldn't see it any more at 1:30.

Q. Did she disappear quickly?

A. Yes, she disappeared quickly.

Redirect examination.

By Mr. Spencer:

Q. How did the lights bear from your lighthouse when you saw them disappear?

A. Due southeast from the lighthouse.

Recross-examination.

By Mr. Hill:

Q. And at that time you could only see her range lights?

A. Yes.

Q. Were they in line or open to port or starboard?

A. They were in line.

Q. She was heading southeast?

A. Yes.

WILLIAM BRASHER, a witness on behalf of the libellant, being first duly sworn, testified as follows:

Direct examination.

By Mr. Spencer:

Q. What is your name?

A. William Brasher.

Q. Where do you live?

A. Lakewood, Minnesota.

Q. How old are you?

A. Forty-four.

Q. What is your business?

A. Stationery engineer.

Q. What was your business on the 27th and 28th of April, 1914?

A. Stand watch from twelve o'clock midnight to eight.

Q. You were then employed at the pumping station?

A. Yes.

Q. How long had you been employed at the Duluth pumping station?

A. Twelve years since last November; since 1902.

Q. Do you remember the occasion of the storm of the 27th and 28th of April, 1914?

A. Yes, sir.

Q. Commonly known as the storm when the Noble perished, went down?

A. Yes.

Q. When did you come on duty on the night of the 27th?

A. At midnight.

194 Q. What direction was the wind blowing from at that time?

A. It was blowing from the northeast, but more from the east.

Q. East or northeast?

A. Northeast by east.

Q. Was it a light wind or a heavy wind?

A. A very heavy wind.

Q. Could you give some idea as to the velocity of it at that time?

A. No, I don't know what the velocity would be.

Q. What is your best estimate of the velocity?

A. I should think it was over 45 miles an hour.

Q. You have been at the pumping station how long?

A. Twelve years.

Q. That's located right on the bank of the lake?

A. Right on the lake shore.

Q. And during the years that you have been there at the pumping station, did you ever experience a storm of that severity?

A. I think the storm in November when the Mataafa went ashore and the Crescent City was beached there was probably as severe; the damage to the banks was worse; but the wind was more between the east and south at that time.

Q. With the exception of the great Mataafa storm—did you ever know of any other storm having the severity that this storm had?

A. Not to bother us in our water supplies as this storm. There has been storms from other directions that would blow our windows out,—wind that blows those big lights right out.

Q. What can you say as to the height of the sea during the 27th and 28th?

A. I couldn't say as to the height of the sea.

Q. Was there a heavy sea or a light sea?

A. Heavy sea.

Q. Did you ever know of as high a sea with the exception of the Mataafa storm?

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A. I have never paid any attention to any worse storm than that,—to make any note of it.

Q. How far below the surface of the lake is the outer end of your intake pipe?

A. 65 feet according to the diver's statement that repaired the screen there.

Q. How did the storm of the 27th and the 28th affect the water which you pumped?

A. There was an accumulation of stuff at each end of the pipe,—where it enters the pipe, and also where it enters the well, and pieces of roots and bark and other things accumulated and lodged in the screen, and when a large quantity of it comes we have to stop
195 the pump and remove the matter in order to get a free supply of water.

Q. Did you have to stop your pump that day for that purpose?

A. Not during my watch, but I would judge it was the day of the 28th the pump was stopped for that purpose. The records will show what day it was shut down. We keep time of every hour we run.

Cross-examination.

By Mr. Hill:

Q. These accumulations are accumulations of years that get into your pipe and clog it up?

A. No, sir, we make a practice of cleaning the well out whenever there is any sign of foreign matter in there, if it was once a week or once a month; and if it accumulated there again we would go right after it again.

Q. Do you clean the outer end of the intake pipe?

A. No, sir, but a diver examines that occasionally.

Q. How frequently is that done?

A. I think it was about three years ago.

Q. Three years before—

A. No; three years from now.

Q. So it would be there—

A. The pipe was all gone over at that time and several thousand tons of rock bedded around there and the screen repaired all along there. I should judge it was about that time. It was a long job and took several weeks to do it.

Q. This accumulation that accumulated at the outer end of the intake and is blown in during a storm, accumulated during a period of time and the storm blows it into the intake?

A. I have no means of knowing that. The flow of water is not very fast and there might be some accumulation, but it takes a very heavy storm to make the water in the well affect that. It takes a very heavy storm to affect it at all.

Q. You are not a seafaring man?

A. No, sir.

Q. You spoke of having the lights, the window lights, blown down; has that occurred frequently?

A. It has occurred three or four different occasions in twelve years.

Q. During the spring of the year you get your hard blows?

A. Yes, but the hard blow in the fall is very likely to be a west wind.

Q. Do you get a northeast in the spring?

A. The heaviest winds we get in the spring are northeast.

Q. And you frequently have heavy blows in the spring from the northeast?

A. Yes.

U. S. Department of Agriculture, Weather Bureau.

Station, Duluth, Minn.

Years 1905 to 1914, Inc.

Data Numbers of Verifying Wind Velocities.

	19	Jan.	Feb.	Mch.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Total.	Absolute velocity.
N. 1	0	0	0	2	0	0	0	0	0	1	0	0	0	3	42
N.E. 2	0	0	5	4	10	14	4	1	0	0	3	6	6	53	68
E. 3	0	0	0	0	0	0	0	0	0	0	0	0	0	00	
S.E. 4	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
S. 5	0	0	0	0	0	0	0	0	0	0	0	0	0	0	40
S.W. 6	4	2	2	5	3	4	0	5	2	5	2	2	1	35	56
W. 7	10	6	6	6	3	5	4	3	1	3	3	6	6	56	60
N.W. 8	27	16	16	15	9	5	2	5	5	4	8	14	15	125	71
Total ...	41	29	29	32	25	28	10	15	8	13	16	28	28	273	

(C. H. E.)

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Thursday, February 18th, 1915—9:30 A. M.

Same parties met pursuant to adjournment.

Mr. Canfield: If your Honor please, I will continue the reading of the depositions. The first being the deposition of Wilson Palmer, residing at Lakewood, Minnesota.

Mr. Leckie: We have here the official weather report from Washington which we desire to introduce at this time for the 27th and 28th of April, 1914.

(Weather report marked Exhibit 22.)

The Court: Is that from Duluth?

Mr. Leckie: The weather observer's office at Duluth. It shows a velocity of 64 miles an hour. It shows they did not — the velocity at all from eight o'clock in the morning until noon of the 28th on account of the machine not working.

The Court: That is just a corroboration of the other?

Mr. Leckie: Yes, except this data which I want to read, your Honor.

The Court: This is no more than a corroboration of the other?

Mr. Leckie: This is the official report turned in from Duluth to Washington.

Mr. Hill: What is it that you desire to offer in addition to the wind velocity?

Mr. Leckie: Just the official report.

The Court: Does the Government take any observations at any other point at the west end of the light?

Mr. Leckie: There is a station at Houghton, Michigan; that is in the Keweenaw peninsula; and one at the Soo. I think those are the two, the Soo and Houghton, Michigan.

The Court: What did Duluth register in the November storm of 1913?

Mr. Leckie: That was the big storm on Lake Huron. I do not know.

198 The Court: I wanted to get some idea of the velocity here.

Mr. Leckie: I do not know, your Honor.

Mr. Hill: There is no objection to Exhibit 22.

The Court: It will be received.

Mr. Leckie: This weather report from Washington shows this: Extracts from the monthly Meteorological notes at Duluth, Minnesota, for the month of April, 1914.

"The most severe storm in nine years began with increasing north-east winds and rain at 4:00 P. M. on the 27th, becoming a moderate gale late that night, and developing into a strong gale at 5:00 A. M., the 28th, and continued a strong gale during the whole day. The rain turned to sleet at 10:00 A. M. of the 28th, continuing until 7:10 P. M., when sleet and rain mixed began, which changed to snow at 8:45 P. M. The snow continued after midnight of the 28th, and did not end until 4:48 P. M. on the 29th. The rain froze on all ex-

posed objects and formed a heavy coating of ice, which did not melt until the morning of the 30th."

"An extraordinarily heavy sea was running all day of the 28th, and the level of the water in the harbor was two feet higher than normal. The steamer Lambert, loaded with grain, which had left port at midnight of the 27th, returned early in the morning of the 28th."

"Silvo Sanden attempted to walk to the end of the Duluth Entry pier as the result of a wager, and was swept away for the waves and drowned. This occurred at 10:00 A. M. on the 28th."

"Early in the morning of the 28th the high winds blew down two bridges at the Clarkson Coal Docks, and part of the structure of one fell across the steamer Champlain damaging her to some extent. The bridges were each 600 feet long, and the total damage is estimated at \$100,000."

"Wreck:

"Wreckage was found along the shore of Minnesota Point on the morning of the 29th. It was identified as coming from the steamer Noble, reported as inbound, carrying a cargo of steel rails. From the state of the wreckage it is assumed that she foundered not very far from shore. There was a crew of twenty men, and up to the night of May 6th, no bodies have been recovered. So far as known this was the only vessel lost during the storm."

Captain RICHARD W. ENGLAND, after being duly sworn by the court on behalf of the respondent, testified as follows:

Examined.

By Mr. Leekie:

Q. What is your occupation?

A. Vessel master.

Q. How long have you sailed?

A. 26 years.

Q. What was the character of vessel that you sailed in 1914?
What size and what type?

A. She is a steel vessel, 552 feet long; a 10,000 ton steamer they call them.

Q. That is what is called our modern 600 footers?

A. Yes, sir.

Q. Were you in this storm of April 27th and 28th?

A. Yes, sir; I went through it.

The Court: What is the name of your boat, Captain?

A. The B. F. Jones.

By Mr. Leekie (continuing):

Q. In what locality were you? Whereabouts were you?

A. We entered the storm off Manitou Island, and held it all the way to Duluth and Superior.

Q. Manitou Island is about the center of Lake Superior?

A. About the middle of the lake, a little to the easterly.

Q. Were you light or loaded?

A. We were light.

Q. During your experience of 26 years you have encountered a good many storms, I suppose?

A. Yes, sir.

Q. Did you have any trouble in that storm getting into Duluth? or Superior? Where was it that you went into?

A. We went into Superior.

Q. Was there any difficulty about that?

A. No particular difficulty; the ship was in pretty good trim, being light. A ship loaded with water is in pretty good shape. We had some trouble getting into the dock on account of the spouts being down.

Q. What was that?

A. The company I work for ship, always shipped over to the east side of No. 3 dock. That night there were no lights lit; the dock was not into commission yet at night, so I could not find out where

200 they wanted to put me on account of the gale blowing. I went in on the east side of No. 3 as usual, and after getting in there I could not see anything, and as I was making the dock they sung out that the spouts were down, and we landed in between spouts and everything. I don't know how we did it. We had to stay up all night, and kept shifting back and forth. There was a big surge running in there.

Q. When you got down in that end of the lake with the wind aft of you, that would be northeast?

A. Yes.

Q. What is the process, Captain, of going into the piers?

A. I went in full speed; I did not check the ship until her stern was clear of the breakwater.

Q. And if you did not just happen to find that hole just right, and fetched a little ways either way, if the lights happened to be out, or obscured with a snow squall, what do you have to do or have to try to do?

A. You have to try to come around if you can.

Q. What sort of a process is that?

A. Putting the wheel hard over; generally hard astarboard, and try to work the ship around.

Q. I mean, is that a difficult thing or an easy thing?

A. It decidedly is at that end of the lake with a northeaster.

Q. And is that plain sailing or dangerous?

A. Dangerous. I tried it once and got on the beach.

Q. When was that?

A. 1905.

Q. Was that what is referred to as the Matafia storm?

A. Yes, sir.

Q. Tell us about your experience at that time?

A. That storm was very similar; the sea was similar to this storm. We went up the lake, and had a very heavy fall of snow. Of course that storm lasted three days, that was the only difference, but the wind was about the same, and the sea. When I got, as I figured, as near as I could, about six miles off Minnesota Point, we could not

see anything, and I attempted to get soundings, and did eventually get 18 fathoms. I figured I was off the Superior piers. I could not see anything at all. I run a little longer, and then I let go both anchors eventually. I tried to work the ship around and I could not. The England did not have side tanks and would not come around. Eventually I let go both anchors. I was not going to go on the beach with the anchors in the hawse pipes but she went on with the whole business. I supposed at the time we had our anchors out, but it turned out that we had lost our anchors and we didn't know
201 it. One chain had parted, and on the other chain the shackle had let go. We went up on the beach, backing at full speed.

Q. In other words, notwithstanding your attempt to turn around, you could not do it?

A. No. I might say the Jones would not turn at this time, as I attempted to turn her at Outer Island.

Q. As far as going in this time you were fortunate enough to strike the hole at the right time and in the right manner?

A. That is all.

Q. What is your estimate, Captain, from your experience, as to the velocity of the wind on this occasion?

A. It is hard to guess when running before it, because it never appears as strong, but I remember distinctly stating to the mate: "We are into a 60 mile breeze all right, that is what it is. It might have been 70 or 55. It is pretty hard to say the exact thing. It was a big heavy gale of wind."

Q. How was it compared, we will say, with the Matafia storm, the sea?

A. I think it was very similar. 20 miles down the lake it was about the same. I do not think the sea was quite as heavy off the breakwater itself at Superior. When I got into Superior the wind was due northeast on this occasion. In the other storm it was E. NE.

Q. How about those storms as compared with the balance of your experience at that end of Lake Superior?

A. They are just as bad as I have ever had.

Q. Those two were the most severe that you ever experienced?

A. Yes, I should say so.

Q. Regarding this particular gale in April, what is the fact as to whether or not you anticipate any such gale as that in the spring of the year?

A. No. You do not look for as heavy a gale as that ordinarily.

Q. Are you familiar with where the weather station and office is located at Duluth?

A. Yes, sir.

Q. Will you just describe it?

A. It is on a hill back of the incline railway, back of the City of Duluth.

Q. And is it on the crest of the hill or on the side?

A. It is on the side of the hill, not quite the top.

Q. Have you ever noticed taking your own boat, for instance, if she is going head into the wind, that if you stand right in front of

your pilot house you do not feel the wind like you will if you stand off at one side?

A. Yes, sir.

Q. And what is the reason for that?

A. I suppose the wind is shooting over you.

Q. And is there any tendency to cushion it—

A. Why a vacuum is formed there, I suppose.

202 Q. And what would you say about the registered velocity of the wind, as shown by the instrument on this office on the side of the hill at Duluth as compared with the wind down on the level of the lake?

A. I do not think they would get as heavy a wind there as we would get down the lake further, 30 miles or so.

Q. And 64 miles registered on the side of the hill at Duluth would probably mean considerably more wind out there on the lake?

A. I would think so.

Q. Did I understand you to say that you tried on this occasion to turn the Jones at Outer Island?

A. Yes, sir; I certainly did.

Q. And what was the occasion of it?

A. I made the island too close, and I had to come around. I think we would have cleared it if we had kept going as we were headed, and very likely would have cleared it, but we made a whole lot more leeway than I figured, and made the island too close for comfort. So I hauled the ship around, and she would not come around. So we run about 25 minutes with the wheel hard aport to get away from the island, but the ship never came around at all.

Q. That would be carrying you toward the north shore, and away from Outer Island?

A. Yes sir.

Q. And with the wheel hard aport and working full speed you could not get her around?

A. No, sir.

Q. If you had not just happened to strike the hole at Superior, you would have had the same predicament?

A. Surely.

Q. I think you said your ship is one of the finest modern steel ships in every respect?

A. She is supposed to be; I do not think I said that.

Cross-examination.

By Mr. Hill:

Q. Now, Captain England, as a matter of fact, the United States weather bureau at Duluth is located right opposite the top of the incline railroad, is it not?

A. No, sir; it is not.

Q. It is not?

A. No, sir. It is down below. You have to get off and go over before you get to the top.

Q. You say it is not opposite the top of the incline railway?

A. I do not think it is.

Q. Have you ever been up there?

A. Several times.

Q. As a matter of fact, the observatory office has a mast on top of it, and the aerometer on that, which goes above the hill?

203 A. I could not say as to that. I don't know where it is.

Q. That is all.

Q. That is all.

By the Court:

Q. When did you pass the Soo, Captain?

A. I passed there Monday morning. I have not got the time, but it was in the neighborhood of 7:30 Monday morning, April 27th.

Q. And you were 36 hours behind the Noble?

A. Yes, sir. I got into Superior at 7:35 the night of the 28th.

Q. Got into Superior at 7:35 the night of the 28th, Tuesday night?

A. Tuesday evening.

Q. And you were about 36 hours from the Soo over to Superior?

A. Just about.

Q. And you were about 36 hours behind the Noble, leaving the Soo?

A. I don't know.

Q. The Noble left there some time on Saturday?

A. Well, just about.

Q. Saturday at 4 o'clock as I remember.

Mr. Hill: Late Saturday afternoon they said.

By the Court (continuing):

Q. Where did you pick up the storm did you say?

A. Off Manitou Island. We had wind from Whitelish to Standard Rock, and then that flattened out, and we ran into a gale of wind off Manitou Island.

Q. At what time?

A. 11 P. M., the night of the 27th.

Q. Monday night?

A. Yes, sir.

Q. What time?

A. 11 P. M. We were at Manitou Island.

Q. And how much of a gale did you have there, how much wind?

A. Well the wind, as I say, flattened out, when we got a little by Standard Rock, as I remember. It was a very dark night and raining. We did not have any wind for quite a while. It did not seem to settle down, and it looked funny. After a while it went into the northeast. I think we run into this thing. I think it had been blowing, because when we got off Eagle Harbor we got into a big sea and a heavy wind.

Q. That is the first you saw of the wind?

A. Yes, sir.

Q. You took the regular course from Eagle Harbor down past Outer Island?

A. Yes, sir.

Q. The regular course into Superior?

A. Yes, sir.

Q. You did not go over to the north shore?

A. No, sir.

204 Q. Or do any of those things?

A. No, sir; we did not have to with that ship. She is a side tank vessel, and running to port she would naturally go along very comfortably. That is the finest shape she can be in.

Q. They sometimes do go over to the north shore?

A. When they are loaded.

Q. You figure you get protection from the north shore?

A. Not very much. You might want to get under the island or into Thunder Bay.

Q. I did not see how you could, but I had the notion that you did go over to the north shore?

A. Not with the wind northeast or to the eastward.

Mr. Leckie: I can straighten that out, your Honor. If you — around Whitelish or starting up that way, you would get more benefit from the north shore?

A. Yes, sir.

Q. But if you were beyond Keweenaw it would not help you out to go up there?

A. No.

By the Court (continuing):

Q. If you were coming down with a heavy northeast wind you could come around?

A. Yes, we might.

Q. What about the Duluth entrance and the Superior entrance in that sort of a wind?

A. I think the Superior is the best, from my experience, to go in for that type of ship which I am in.

Q. But that night they had no lights there?

A. They had lights on the light house; this was the lights on the docks which I could not get.

Q. You say for that type of vessel. We will say a type like the Noble. Would there be any difference which harbor they went into?

A. No, sir. I think a boat that short would go into Duluth all right.

Q. Would there be any advantage one way or the other?

A. If she was loaded, no. The advantage of Superior, if you go in light, you can go on the beach without injury or hurting anything; that is the only advantage.

Q. In 1895, where did you go on the bank?

A. Down below the life station, about a mile and a half, I should think.

Q. You mean on Minnesota Point or below along to the north—

A. On Minnesota Point probably about in there (showing on chart).

Q. Between Duluth and Superior?

A. Yes, sir.

Q. What is the bottom in there?

A. It is all sand, very fine sand, like they have in bird cages.

Q. And on the north shore you get rock?

A. All rock.

205 Q. Where does that begin, immediately from Duluth?

A. Right at the north side of the north pier.

Q. At the Duluth entrance?

A. Yes, sir.

Q. And from there all along the north shore is a rock shore?

A. Practically the whole distance.

Q. But from Duluth to the south, is that sand?

A. Sand.

Q. Down to Superior?

A. Yes.

Q. And then on down?

A. The south shore.

Q. The whole south shore?

A. That is as far as the island, as far as Sand Island.

Q. Can you tell me anything about where, with the wind N. E., by E., where the wreckage would be likely to come in?

A. It would come down on Minnesota point. A ship lost out on the lake—where was she lost. Where do you assume she was lost? How do you want me to answer that?

Q. We do not know about that. Somewhere out to the northeast evidently. We do not know which bank she went on.

Mr. Hill: About the only way to get at that, and get an expression from the captain, the wreckage was picked up somewhere a little to the southward of the life saving station on Minnesota Point.

The Court: And some of it up above.

Mr. Hill: Some of it from there to the southward.

The Court: There were shingles.

Mr. Leckie: They were not off our deck. They were off the Minneapolis, that lost her deck load.

By Mr. Leckie:

Q. Assuming that the wreckage was picked up a little to the southward of the life saving station on Minnesota Point, with the wind and sea practically northeast, about where would you figure the boat had gone down, that furnished that wreckage?

A. That would be hard to tell, because if the vessel were lost right off the north shore, that might float down to the piers, and it might show up off Minnesota Point. I should not say. On the other hand some ship might be lost south of the Duluth piers, and blow straight in with a northeast gale.

By Mr. Leckie:

Q. Will you give the court some idea of the various things
206 that might occur to a boat under those circumstances?

Mr. Laws: That is a little indefinite and we will object to it. A great many things might happen.

The Court: I take it there are a thousand.

Mr. Laws: Yes, your Honor.

The Court: Yes, there are too many that might occur. You can put it in the record if you want to. I do not want you to do it with every witness now. However, if you want to ask one or two witnesses that sort of a question I will let you.

By Mr. Leckie (continuing):

Q. When the sea is running after the boat, have you ever had experience with what they call throttling?

A. Oh, yes.

Q. What is that?

A. Then the engineer shuts the steam off, when the wheel is out of the water, so the engine won't race too much, and relieve the pressure.

Q. And when that is being done, is the ship, the engine, the machinery, wheel, shaft, rudder and so on subjected to unusually heavy strain?

A. Undoubtedly.

Mr. Laws: We object to this line of examination as entirely incompetent, irrelevant and immaterial, and entirely speculative.

Objection overruled; exception for claimant.

By Mr. Leckie (continuing):

Q. In that end of Lake Superior, what is the character of shore along the north shore?

A. It is a rockbound coast.

Q. And in snow squalls would there be danger of striking rocks along the north shore?

A. Most assuredly if you went too close.

Q. With such a sea in that end of the lake that it stirs up the debris and blocks up the intake pipe of the pumping station, what would occur if a vessel's wheel happened to strike a log or something of that sort?

Mr. Laws: That is objected to as incompetent, irrelevant and immaterial and entirely speculative.

Mr. Leckie: I take it that the whole loss is entirely speculative.

207 Mr. Laws: We do not think so.

The Court: You may take the answer.

Exception for claimant.

A. Why with big timbers like that, you might unship the vessel's rudder or break her wheel; you might block the wheel too with that sort of a condition. All sorts of things might happen to that ship, with that stuff floating around.

Q. If any one of those various sorts of things, or thousand of things that could occur, did happen to occur, so that her machinery was put out of commission, the rudder or anything of that sort, what would be the result in that sort of a sea?

Objected to; objection overruled; exception for claimant.

A. I think that the ship would meet with very serious disaster.

By the Court:

Q. Did you blow for any tug when you came in there?

A. I did.

Q. Did you have a tug?

A. No, sir, there were no tugs there. We did not have one. We were the first steamer in there I think.

Q. Did you see the lights at Two Harbors coming in there at night, into Duluth and Superior, in a storm?

A. Well if we go down to the north shore we get a departure there, and get a distance off the lights so as to shape a course to Duluth or Superior, in that way only.

Q. And when you are coming down on the course that you did, are there any circumstances when you go across and pick up the Two Harbors lights?

A. No. We try to make as straight a course as we can. There is nothing to take us over there to get the lights and come back to Superior, not with that type of vessel.

Q. Well, I mean with a smaller vessel; there is nothing about finding the way into Duluth that you go across to Two Harbors and pick up that light, and take a course in from there, rather than the regular course in?

A. If a man had been wandering around the lake, and lost his reckoning, he might try to find Two Harbors first, and shape his course to Duluth; he might do that. I have done that myself, because you don't want to make any bad fetch at Duluth and Superior.

Q. That is the first light down the lake, the Two Harbors
208 light?

A. Yes. It is the last light you get before you get to Duluth of course.

Q. Well in that storm would there be anything, any other theory, from the standpoint of a navigator, why the Noble would go over to the north shore there, other theory than that she was lost. Is there some other theory, from the standpoint of a navigator, that he would be over there on a boat of that sort?

A. He may have been in distress and went over there. Possibly he might have made up his mind it was too bad to attempt to get into that port, and turned around and proceeded to Duluth, some-

thing of that nature. It is hard to tell what a man would think. I was not in that ship at all.

Q. I was asking you, from your experience——

A. He may have gotten in there, and he might have been afraid to tackle Two Harbors when he got there. He may have been in trouble, and made repairs and proceeded on again.

Q. What places would there be for a boat that had gotten up as far as Apostle Islands, on her way to Duluth and Superior, and she gets into a heavy northeast sea, what places are there for shelter?

A. When she gets by the islands?

Q. Yes.

A. If she has got by the islands there is no place excepting Two Harbors.

Q. And what would be the natural place to try to go for safety, if you are in trouble, take a boat like the Noble, and assume she was in trouble, and she was wallowing in a sea, and alarmed?

A. Two Harbors.

Q. What is the best place?

A. She would try to get into Two Harbors, I think.

Q. That would be the practicable and sensible thing for a man to do.

A. She would tackle the first place. If her master felt he could get his vessel in there.

Q. And if he got over there and he didn't think he could get in there with safety, what is the next best thing for him to try to do?

A. There is nothing left but to go to Duluth then, with that little vessel, if she was over on the north shore, with a northeaster, loaded.

Q. And if he got down towards Duluth and did not dare take a chance to go in?

A. You have got to go in; there is no chance to take.

Q. With this boat?

A. She was loaded. She was a little short vessel.

Q. Supposing this boat did turn around in this wind and go back. What about that? Was that a safe thing?

209 A. Oh, surely. That vessel would turn all right, a short vessel, loaded.

Q. Is it safer in that sort of a storm to try to turn or to try to go into either Duluth or the Superior entrance?

A. If she was not in distress and everything was all right, she might turn and go down the lake again, but if there was something the matter with her, and she was in serious trouble, I think she would go to Duluth. I was speaking—when I spoke along that line, I said entering Two Harbors, if she was in distress, to try to get into Two Harbors. I meant some sort of trouble aboard the ship.

Q. What do you think about that, a boat like the Noble, loaded, do you think she could get into Duluth all right?

A. Yes.

Q. The way the sea was?

A. I think so.

Q. You think the sea was not so bad but she could get in?

A. The sea was as bad as it can get, but I think if she could see all right, she could get in there all right.

Q. How about her getting in at Superior?

A. She could get in there too, if she could see and everything was well aboard the ship.

Q. That is all.

By Mr. Leekie:

Q. Regarding the use of the tug there. The tug would not be of any service until you got inside?

A. No, sir.

Q. The tug would not dare come near you outside?

A. No, sir.

FREDERICK H. REID, after being duly sworn by the court on behalf of the respondent, testified as follows:

Examined.

By Mr. Leekie:

Q. About how long have you sailed, captain?

A. About 26 years; 24 to 26.

Q. And what steel ship were you in in 1914?

A. A modern 600 footer.

Q. And what lake were you on in the storm of April 27th, and 28th?

A. Lake Superior.

Q. Was your boat loaded or light?

A. Loaded.

Q. Loaded with what?

A. Coal.

Q. About where did you run into that gale?

A. I should judge it was along about 20 or 25 miles east by south of Standard Rock, when it first struck me. Of course it kept breezing up all evening, from the evening of the 27th to the morning of the 28th, and commenced freshening up along about that time.

Q. Did you have difficulty with your ship in that storm?

A. Yes, sir.

Q. Will you describe that to the court.

A. We got up pret yclose to Standard Rock, and was commencing to wallow around, and the seas were boarding her; I pulled her up to the northward and headed into it, and worked that way all morning. At 2 o'clock in the afternoon I thought she was far enough to the northward to make the course to Devil's Island. I attempted to turn her and run before it. The minute I put the wheel hard astarboard, she came around and headed northwest, and she would not come any further for quite a while. Then she commenced to throw her hatches off. That looked kind of serious to me. I thought I would try her the other way again and head her

into it. I saw we could not stand that way long. I put the wheel hard aport, and she hung on a little while, probably a minute I should judge, and was smashing everything there. All of a sudden she walked up and headed into it again. I was thankful to get around, and I kept her that way until I got up to Battle Island.

The Court: This was what time?

A. 2 o'clock in the afternoon.

The Court: What date?

A. The 28th.

The Court: That is Tuesday?

A. I don't remember the day; the 28th.

By Mr. Leckie (continuing):

Q. From the course you had taken and steered, that would put you off to the northward of the Keweenaw Point light?

A. Yes, sir, heading for the north shore.

Q. And up in that locality, how would the sea compare with the way the sea would be at the west end of the lake, with a northeast wind?

A. Well if it was blowing as hard at Duluth as where I was, there would be a larger sea at Duluth, at the west end.

Q. And as you were laboring in the sea, was the sea breaking aboard your boat?

A. Yes, sir.

Q. Did you observe any other boats anywhere near yours during that gale?

A. Yes, sir.

211 Q. How did they act regarding the sea?

A. There was one boat, the Sheldon Parks.

Q. What style of a boat is she?

A. She is a modern, what we call our modern 600 footers, or 552 I think she is. We call her a modern 10,000 ton boat.

Q. What about her?

A. She would not attempt it at all. She was up heading west from our bow. He would not attempt it at all. I blew him two whistles to notify him I was going to turn. He didn't seem to pay any attention to me. He stood on the top of the pilot house watching me.

Q. Did you notice any other boat in your vicinity?

A. Yes. I saw another small boat astern of her, laboring hard. He was light. The seas were piling aboard of him forward. He could fetch her up and head into it again and all at once he would come around again. I could not make out the name or what class of boat, but it seemed like a small boat.

Q. From your experience on the lakes, what would you say about the character of this storm, particularly as to the sea, whether it was usual or unusual?

A. It was unusual at that time of the year; unusual.

Q. Was it customary, or how did it compare with what you would reasonably anticipate in the spring, up in Lake Superior?

A. I think it was about as severe a storm as I ever experienced, outside of one exception, and that was years before in another boat.

Q. For that time of year on Lake Superior, would you say it was such a storm as you would reasonably anticipate or not?

A. No. We do not anticipate such a gale of wind as that in the spring. I never did.

Q. You have told us your boat was one of the modern 600 footers?

A. Yes, sir, the Willis L. King.

Cross-examination.

By Mr. Laws:

Q. You get severe gales in the fall and spring of the year on the lakes?

A. Yes sir.

Q. That is all.

By the Court:

Q. Was that a greater gale than you would anticipate seeing on the lakes at any season of the year?

A. No, not any season of the year, but in the spring—in the spring of the year we get storms, but we think nothing about it, thinking they will moderate in a short while. In the fall, when the wind blows on the lakes, it is apt to continue quite a while.

212 Q. What is the name of your boat?

A. The Willis L. King.

Q. Are you familiar with the Noble?

A. I was never aboard of the Noble.

Q. You have been here and heard her described?

A. Yes, sir. I saw her just at a distance.

Q. Do you think a boat like the Noble could survive that storm, that ship?

A. Well, I don't know.

Q. What is your best opinion about that as to whether she could live through that or not?

A. I don't know. She was a single decker, and it was a monstrous sea. I would hate to be on her myself.

Q. And what you say if she was loaded decks to?

A. If she was decks to I don't suppose she would have any more chance than she would otherwise.

Q. Would she have as much chance as she would otherwise?

A. In that particular sea, I don't think three or four inches or a foot would make any difference, because the seas would pile on her.

Q. They would pile on her, but what about the chance of discharging them?

A. I do not think she could discharge them any more than she could if she was down decks to.

Q. Would not there be some limit to which you could load her that would make it worse to discharge the seas?

A. Sure. There would be some limit, but you take a boat like that, a short boat like that, it is my judgment to load her down that way, decks to or give her six inches of freeboard, I do not think that

6 inches would make an awful difference in that sea. It would in some seas; in a moderate sea it would help her. The seas would come so fast as to swamp her.

Q. Do I understand you to mean there that if she had 6 inches, or put her down decks to, it could not make it any worse?

A. That could not make it any worse. That is the way I feel about it.

Q. Do you mean she could live in that sea if she had 6 inches?

A. No. I don't believe she could.

Q. Is there any place where you would give her life in that sea?

A. I never sailed one of that class of ships. I have sailed pretty nearly every other class but that. I never sailed a single decker.

213 FRANK GOODROW, after being duly sworn on behalf of the respondent, testified as follows:

Examined.

By Mr. Leckie:

Q. What is your occupation?

A. Master of steam vessel.

Q. What ship were you in in 1914?

A. The Steamer Norwalk.

Q. About how long had you been in the Norwalk?

A. 17 years.

Q. Will you describe the Norwalk?

A. She is a wooden ship, 209 keel, 38-8 beam, 14 feet molded depth.

Q. She is what is called a single deck type of boat?

A. Yes, sir.

Q. Were you in this storm or part of it in the spring of 1914?

A. Yes, sir.

Q. By the way, you saw something of the Noble on the way up?

A. We passed her.

Q. Where was the last place you saw the Noble?

A. About 20 miles off Portage Canal.

Q. And from that time on you saw no more of her?

A. No, sir.

Q. Will you describe something of the character of this storm, how your boat acted. You got into Duluth, did you?

A. Yes, sir.

Q. Will you describe this storm, where you run into it and what sort of a storm it was, and how you got into Duluth?

A. Well, after we passed the canal, about the upper end of Isle Royal, at 2 o'clock in the afternoon or thereabouts, I was turned in, and the boat started to roll. We were light of course. I got up and looked around and asked the mate what it was going to do. Our barometer being low, and thinking we might get westerly wind, I hauled her to the north until about six o'clock that night. The wind started to blow about 3 o'clock in the afternoon from the northeast with a little rain, and kept increasing all the time after that.

The Court: This *way* Monday?

A. Yes, sir, Monday. At 10 o'clock that night we passed Devil Island, and checked our steamer down. She was throwing her wheel out of the water at that time. We checked her down so as not to get to Duluth before daylight.

214 The Court: What time did you pass Devil Island?

A. 10 o'clock on the night of the 27th. We arrived at Duluth at 3:50 the morning of the 28th.

By Mr. Leckie (continuing):

Q. Now will you give us some idea of the nature and character of the storm, as to whether or not you had any difficulty?

A. No, we had no difficulty, as we were able to see all the time four or five miles. When we arrived at Duluth of course there was a big sea rolling over the top of the piers, but we slid in all right and made the harbor.

Q. How about the nature of the sea? How did it compare with other seas you have been in?

A. Well it was about as big a sea as ever I had been in.

Q. How about the sea for that time of the year?

A. It was the largest sea I have ever been in at that time of the year.

Q. Now the way the wind was blowing, was not there something about your letting go an anchor?

A. Well, I let go my anchor in the harbor, after we got through the International Bridge, and tried to stop her. Our anchors would not hold her, and we had to go through the M. P. bridge full speed with our anchor down in the water, to keep from going on the middle ground. When we got to the point where the channels run up and down, the regular St. Louis channel, I thought probably she would come around and head into the wind. The wind blew us port side up the channel until we got up to the Massaba dock, and I shoved her into the ore dock.

Q. How did you finally stop the boat?

A. That is how I stopped her. I shoved her in between the ore dock and she came up against the dock. That is the only way I stopped her.

Q. And the place where you finally got the boat stopped was how far up the harbor from the entrance?

A. I should judge it is a mile and half or two miles.

Cross-examination.

By Mr. Hill:

Q. You were up bound light?

A. Yes, sir.

Q. That is all.

By the Court:

Q. When was it that you last saw the Noble? What time?

A. About two o'clock on Monday afternoon, the 27th.

Q. And where was that?
215 A. That was about 20 miles to the north and west of Portage Canal. About almost the upper end of Isle Royal.

Q. And how far off Eagle Harbor did you pass?

A. Possibly about four or five miles.

Q. At what time?

A. Eagle Harbor? We passed Eagle Harbor along about 9:30 in the morning, or 10.

Q. 9:30 in the morning of what day?

A. The 27th.

Q. That is Monday?

A. Yes, sir, Monday. The Noble was then ahead of us.

Q. Show me your course on the map here.

A. We were coming along this way.

The Court: Have you got the rest of this map here?

Mr. Hill: Yes, here it is, your Honor.

A. Here is the canal (pointing) and here is Eagle Harbor.

Q. Where did you first pick up the Noble; where did you first see her?

A. At Manitou Island. At 6 o'clock in the morning we were about here (pointing).

Q. From Whitefish across to Manitou, you took what is called the Whitefish course?

A. The Keweenaw course.

Q. Some call it the Whitefish course?

A. This is the Keweenaw course. At 7 o'clock in the morning, after breakfast, when I came out, she was about here. We were just abreast there (pointing). She was probably about three or four miles ahead of us, and she continued ahead of us until she reached about here (pointing).

Q. That would be about——

A. To the north of——

Q. Portage Lake?

A. Portage Canal. That would be about between 11 and 12 o'clock. We continued on this course until about 2 o'clock in the afternoon, and then we hauled off in this direction (pointing) and she kept on her regular course.

Q. And the last seen of her she was taking the course for Devil Island?

A. Yes, Devil Island.

Q. And that was what time of the day?

A. About 2 o'clock in the afternoon.

Q. And you took the course to the north and westward of Isle Royal?

A. Isle Royal——

Q. Over there to the north course?

A. Yes, until 6 o'clock that night.

Q. What was your idea going off to the north course, Captain?

A. We were light, and with the barometer as low as it was, it

216 was an indication we might get northwest winds, and by going over there I would get shelter.

Q. You would not look for shelter from a northeast wind by getting over there?

A. No, sir. At 2 o'clock in the afternoon the lake was almost a dead calm.

Q. The way the wind was and the way the sea continued you did not get the advantage of any shelter, did you? You did not get any?

A. No, sir, did not get any.

Q. You would have had just as favorable a sea and just as safe a sea if you had stayed on the course, on the Devil Island course, the same as the Noble?

A. Just the same.

Q. Your expectation was there might be a northwester?

A. Yes, that is the only reason.

Q. And you have no reason to think, as I understand it, that the Noble encountered any worse seas than you did?

A. No, sir.

Q. From the course that she took?

A. No, sir.

The Court: Did you ask him as to the velocity of the wind?

Mr. Leckie: No, your Honor.

By the Court (continuing):

Q. What do you think the velocity of the wind was, Captain?

A. 35 to 40 miles an hour at that time, that night.

Q. At any time did it get any greater than that?

A. Well in the morning I imagine it was greater, but of course I could not say.

Q. Now what time would you have reached Duluth if you had continued on the Devil Island course, the regular course?

A. Just about the same.

Q. I understood you to say that you did hold up?

A. Yes. We made faster time going light than we would if we went full speed in smooth water.

Q. What sort of speed—did you observe what speed the Noble was making?

A. She was probably making a quarter of a mile an hour—we probably were making a quarter of a mile an hour faster than she.

Q. And what were you making?

A. About 10½.

Q. And she was making somewhere about 10 miles an hour?

A. Probably a little over 10; not much.

Q. When would she naturally have reached Duluth if she continued on?

A. She would have reached Duluth three quarters or an hour—

Q. How?

A. About three-quarters of an hour after I reached Duluth.

217 Q. That would have been about 4:30?

A. Somewhere around there.

Q. In the morning?

A. Yes, sir.

Q. Tuesday morning. Now I think her cargo was consigned for Superior. Can you tell me, going up with a cargo for Superior, would that indicate anything as to whether or not she would go in at the Superior entrance or the Duluth entrance?

A. I think she would go in at the Duluth entrance.

Q. You think she would go in at the Duluth entrance?

A. Yes, sir.

Q. Why?

A. Because it is nearer the Superior docks at the Duluth entrance than it is by the Superior entrance, where they unload the rails.

Q. How about your opinion as to the ease of entry in a storm like that, at Duluth or the Superior entrance?

A. A short boat like that can enter either harbor; one is about as good as the other. For my part, I prefer to go in at the Duluth entrance.

Q. Did you have any water on? You say you were running up light?

A. Yes, sir. We had no water on.

Q. You would have been in better shape for a sea with some load than if light?

A. Why I don't know—

Q. With the wind after you, she was better light than if you were headed into it?

A. Yes.

Q. If you were headed into it—

A. We could not head into it.

Q. But with the wind after you, you would be all right light?

A. Yes, sure.

Q. Tell me whether you would be just as well off with the wind after you light or loaded, which?

A. For us, we are a little bit better off light than if we are loaded of course. It is like a chip on the water. We would not be able to handle her so well light as we would loaded.

Q. Are you familiar with the Noble?

A. I have seen her two or three times.

Q. And you have heard the testimony here about the Noble and her cargo?

A. Some of it, yes.

Q. And how deep ought she to be loaded to be safe?

A. I don't know.

Q. You heard them describe that ship, have you?

A. Yes.

Q. So you understand what kind of ship she was?

A. Sure, yes.

Q. Well if you had a ship of that kind, wouldn't you know how to load her?

A. I think so.

218 Q. Well tell me how to do it?

A. If they had loaded her the same as I loaded mine, perhaps I would load her to my own judgment.

Q. That is what I want is your best judgment. That is just what I am asking you for.

A. Sometimes I load her with two inches of water on the deck. It has happened many a time. Sometimes I don't load her so deep.

Q. Why not? Why don't you load her down that way every time?

A. It just depends on how I feel about it.

Q. Is that all there is to it?

A. That is all. If I think I can make a run from Duluth or Lake Superior—if I figure we are going to have good weather, I load her down decks to, or decks under.

Q. It has to do with the weather, as you figure it?

A. Yes.

Q. How do you tell about the weather?

A. Well, by barometers. But we don't propose to run into a terrible gale if we can help it. We have harbors for those little boats every little ways, and when the weather does not suit me I go into those harbors until it does suit.

Q. What harbor do you go into down at the west end of Lake Superior?

A. When you get down to the west end of Lake Superior, and you get by the islands, you have no harbor.

Q. If you are going to run your boat down in there, do you load your boat that way then?

A. Yes.

Q. When is it you don't load her that way, if you load her that way when you go to the west end of Lake Superior? Where are you headed for when you don't?

A. It depends on the amount of cargo we have and the kind of cargo we have. We don't carry the same kind of cargo all the time. We have probably a dozen different commodities which we carry. We are not confined to coal or iron ore.

Q. What kind of commodities are best for deep loading?

A. Well, of course, lumber is the best.

Q. What is the worst?

A. Iron ore I suppose.

Q. Where would you class steel rails?

A. Better than iron ore.

Q. In what respect?

A. I always found it so; the ship seems to have more buoyancy when loaded with steel rails, and is livelier, than shipped with iron ore.

Q. What do you mean by more buoyancy?

A. The reason for that we usually put the rails on the
219 deck, when we carried rails. We have not been carrying rails now in six or seven years.

Q. What I am trying to get at is when it is that you do not load her down. I understood it depended on the place you were going

and the trip and the weather, as you estimated it, as to whether you would load her down deep the way you told us or not. Now when is it you do not load her down that way?

A. I don't generally put her down decks to the first trip in the spring or in the fall, after the middle of October. We don't generally do that, but I have loaded her so she would be within three or four inches of the deck at that time of the year very often.

Q. Why not at that time of the year?

A. I don't know why, just a matter of not being so deep, that is all, and being a little more comfortable, and we like to get back to our meals sometimes without wearing rubber boots.

Q. Does it have anything to do at all with the safety of the ship?

A. Not with my boat.

Q. How?

A. Not with my ship.

Q. Is there any limit to that at all?

A. Well, there is a limit. When you get loaded down to the decks, I think that is the limit. My decks has been 2 inches under several times.

Q. Do you think the Noble could have lived in that storm, if she was working all right, and loaded all right?

A. I think so.

Q. How?

A. I think so.

Q. From what you know of her and of that storm, you would think——

A. And what I went through myself.

Q. How deep do you think she could have been loaded and everything else working all right except the load being too heavy—how deep would you put her, before you think she would be lost in a storm of that kind?

A. Well I don't know. If I had been on that boat probably my judgment would have been different, after I found out what she could do. I would not probably load her as deep the first time as I would afterwards.

Q. How deep would you load her the first time?

A. As deep as my predecessors did, if I had been in the boat; whatever they had loaded her, I would load her to that. I would govern myself accordingly after.

Q. The first trip of the year, would you put her down as deep as you found she had been?

A. As deep as my predecessors did.

220 Q. Do you mean you would put the maximum load on, the biggest load she had ever carried, on the first trip?

A. I would not know what that would be.

Q. I was wondering. I understood you to say you would load her as deep as your predecessors had. I was wondering whether you would pick out the lightest load which they had carried or the heaviest load.

A. No, at that time of year. They generally leave a record behind them.

Q. That would govern you entirely?

A. Yes.

Q. As to what she had done before?

A. Yes, sir.

Q. That would govern you entirely?

A. For the first trip.

Q. For the first trip?

A. Yes, sir.

Q. You would not use your own judgment as to the situation, but it would be the history of the ship?

A. Yes, sir.

Q. That is as to what she had carried before?

A. We find out for ourselves afterwards.

Q. That would govern you entirely for the first trip?

A. Yes, sir.

Q. How would be the natural way for a captain to get that information?

A. His log book, the previous log book.

Q. And will you find that on the boat always?

A. Most always.

Q. The testimony in this case would indicate that the captain was inquiring something about what she had carried? Why was that necessary?

A. How is that?

Q. How would that be necessary? There has been some testimony here showing the captain had been making inquiries at the dock office about her loading. Would he have a log on the boat that would tell him all that?

A. Yes, sir. I have. I suppose every other master has, every ship has. You don't have to go to the dock foreman or the dock laborers.

Q. That would show the kind of load and the class of merchandise?

A. Yes.

Mr. Leckie: Inasmuch as we have gotten into that, I want a little more now.

By Mr. Leckie (continuing):

Q. A master, looking through the log and finding the cargo she had been carrying 2900, 2950, 3,000 and so on, would that help him to form his judgment as to how much he would put in her?

A. Yes, sir.

221 Q. He would use his judgment, but that would be a pretty good basis to put his judgment on?

A. Yes, sir.

Q. You are more or less familiar with the Noble, the Beattie, the Spalding and boats of that type?

A. Yes, sir.

Q. They are single deck vessels the same as your own?

A. Yes, sir.

Q. And you naturally watch them pretty closely?

A. Yes, sir.

Q. Have you carried a good many rails?

A. Yes, sir.

Q. In years past?

A. I have.

Q. Did you ever carry them out of Conneaut?

A. I have, yes.

Q. These times you have spoken of, of having loaded with decks to, and with water on the decks, did that ever occur at Conneaut?

A. Yes, sir.

Q. If the Noble, loaded with steel rails at Conneaut, was so loaded that a man would stick his hand down in the scuppers and get a couple of inches of freeboard at her lowest place, that is taking a couple of inches before touching the water, and assuming she had 160 tons of fuel on board, pretty well aft—you know it is pretty well aft on her don't you?

A. Yes.

Q. And she had encountered ice on the way up and say she was a little longer than usual in getting to the Soo, would her freeboard increase or diminish by the time she got to the Soo?

A. It would diminish.

Q. How do you make that out?

A. Burning the fuel out, from the extreme after end.

Q. Then what would occur?

A. Lighten up.

Q. Lighten up. If a man went and put his hand down in the scupper now, he would have to shove it a good deal further down to touch the water?

A. Yes.

Q. Then the freeboard, that is, the distance of the deck above the surface of the water, would be greater?

A. Greater.

Q. And if this particular boat had that much freeboard, as indicated by this man sticking his fingers down at Conneaut, and if the lock man at the Soo said that the boat was drawing 18-3 aft and 18 forward, and she is 18-1 molded depth, they are mistaken aren't they?

A. I think so.

Q. As a matter of fact, if she was drawing 18-3 aft and 18 forward at the Soo she would have water on her decks with 18-1 molded depths?

A. She would.

Q. And if the same man testifies there was no water on the deck at the Soo he is mistaken again about her draft, isn't he?

A. I should judge so.

Q. He would have to be.

The Court: Or put water on the deck?

A. Yes, sir. He would have to be. If she had no water on the

deck leaving Conneaut, and reached the Soo after lightening up two or three inches, I don't see how she could have two or three inches of water on her deck.

Q. And you don't see how she could draw 18 forward and 18-3 aft? at the Soo?

A. No, sir.

Q. If she had 160 tons or 150 tons, full fueling on her, the Noble, with it pretty well aft, and was burning that up for ten or 11 days, leaving Conneaut the afternoon of April 18th and running into this gale of wind on the west end of Lake Superior on the 27th—it would be approximately 9 days, after burning out that much fuel, and having this couple of fingers freeboard left at Conneaut, how much freeboard would that give her at the west end of Lake Superior?

A. I don't know.

Mr. Laws: There is no evidence here this boat was sailing all this time. She was laid up at Detroit for repairs. I object to the question because there is no evidence she was burning coal all that time.

The Court: The witness says he does not know.

Q. From your experience of the way boats will raise from the burning out of fuel, about what would your judgment be on that?

Objected to.

The Court: You may answer the question. You may have an exception.

Exception for claimant.

A. It all depends on the quantity of fuel which she burns per hour. That many hours, you can tell. My boat will raise between Conneaut and the Soo about 3½ to 4 inches.

Q. And how much would she raise from the Soo to the west end of Lake Superior?

A. 9 inches, 8 to 9 inches.

Q. That is from Conneaut to the west end?

A. Yes.

Q. Now take the same basis that would give—we will say
223 even lower than that, so as to be sure about the amount this boat would raise, with the fuel well aft in her, even if she made a straight run without any stop anywhere, she would raise a few inches, wouldn't she?

A. She certainly would.

Q. She would raise as much as four inches beyond any doubt?

A. She would raise more than that.

Q. We will take four?

A. Yes.

Q. So we know we are safe. Adding that to what it was in Conneaut, that would give her at least 6 inches freeboard, would it not?

Mr. Laws: Does your Honor think this is examination in chief. The form of these questions, it seems to me, they are very leading. They are objectionable.

Mr. Leckie: They are leading, but it is a matter that the court brought out.

The Court: The objection will be overruled.
Exception for claimant.

Q. Now I want you to give us your judgment, Captain, of a boat of the type of the Noble, as to whether or not she was reasonably fit to make that voyage at that time of year with 6 inches of freeboard?

A. I should judge so; I should consider so.

Q. That is all.

Examined.

By the Court:

Q. Where would you say the line was between safety and danger?

A. I would consider she would be safe until she was decks to.

Q. Beyond that, say with any of this class of boats, it might be dangerous?

A. Beyond that it would be dangerous, yes.

Q. And if there was water on the deck you would think it would be dangerous? *

A. I came down the last trip in the fall, this fall, with my decks to.

Q. I asked you the question whether you would think it would be dangerous beyond decks to?

A. Yes, it would be dangerous beyond decks to.

Q. Why do you do it, Captain?

A. We think she is safe enough, that she has buoyancy enough.

Q. You are taking some chance?

A. Taking our chances.

Q. Why do you do it?

A. To carry a big load.

Q. What do you want to carry a big load for when you are taking chances? I want the real reason.

A. I don't know as we are taking any more chance
" 224 than we would any other time, than in the middle of the summer, any or more chances.

Q. I understood you to say you are taking a chance, but you want to carry a big load?

A. Yes.

Q. I want to know why. Why do you do it?

A. I don't know why we do it. We do it, and that is all.

Q. Did anybody ever find any fault with you for doing it?

A. No, sir.

Q. Did you ever have anybody criticize you for doing it?

A. No, sir.

Q. Do your owners know that you do it?

A. Yes—I don't know as they do. My owners never saw the boat loaded down with her decks on the water; never saw that.

Q. What makes you chance your life in order to carry a big load?

A. Why I don't know. We expect to go through without meeting

any great storms or expect to go through without having a collision, or expect to go through without going aground. All those things. We don't expect to run into any disaster. If we did, probably we would not go on the trip.

Q. But those other things are necessary to do, that you mention. Those are something which cannot be avoided.

A. They could be avoided the same as you can avoid a storm.

Q. Well it is not always possible to avoid going aground, is it?

A. No, sir. It is not always possible to avoid a storm either.

Q. But it would be always possible to prevent loading a ship down decks under water?

A. Yes, sir.

Q. If you were going to take a ship out and you knew you were going into a 40 mile gale, how deep would you load her?

A. I would not load her; I would not go out.

Q. You would not go out if you knew you were going to get into a 40 mile gale?

A. No, sir.

Q. A 30 mile gale?

A. No, sir.

Q. 25?

A. No, sir.

Q. 20?

A. I would take a chance.

Q. Would you load her just as deep for a 20 mile gale?

A. Yes, sir.

Q. As though you knew it was going to be perfectly calm?

A. Yes, sir.

Q. Well if you thought you were likely to get into a 50 mile gale or liable to we will put it, how would you load her?

A. I would not want any load in her at all with a 50 mile gale.

Q. Well 40? If you thought you were liable to strike a 225 40 mile gale that trip, how would you load her?

A. Well that class of boat, I probably would give her 6 inches of freeboard, but that is about all.

Q. Why not put her down like you did the other time? with the decks a little under water?

A. The difference that we carry does not make very much difference in the earning capacity of the boat, 4 or 5 inches on that size of boat.

Q. Why — you not put her down, if you thought you were liable to get into a storm, why wouldn't you put her down decks to or a little under water?

A. Because we don't expect any storm.

Q. I say when you do. Why not put her down under water all of the time. Why leave her up 6 inches when you think you are liable to run into a storm?

A. The reason we don't do it, probably we are detained too long, and we might have to go into too many harbors.

Q. What do you have to go into the harbor for, just because she was down under the water?

A. Any storm we go into a harbor.

Q. What I want to get at is why you say—you say if you were expecting a storm you would not put her decks a little under water?

A. No.

Q. But leave 6 inches of freeboard?

A. Yes.

Q. Why, is what I want to get at?

A. So she would probably ride the seas a little better, and give a better chance to get in and turn around or something like that, that might happen. That is no reason why—I don't know why.

Q. Is there anything about getting rid of the water that comes on your decks, between the two?

A. Yes, sir.

Q. What about it?

A. Of course, the higher out of the water the less water you will—in ordinary seas—will remain on the decks, but I never saw any difference in it, whether we had 6 inches freeboard or whether we were decks to.

Q. But I understand you to mean, if you knew you were going to get into a heavy sea, you would just as soon be down with decks under water to start with as not?

A. No, I don't.

Q. Now I don't understand you. You say you never noticed any difference where you were in a big sea, as to the way she freed herself of water?

A. I didn't notice any difference. The water comes on them so fast that there is a certain quantity of water aboard them all the time, whether they have 6 inches freeboard or whether they are decks to.

226 Q. Are you any more likely to sink with decks to or with 6 inches of freeboard?

A. You are more likely to sink when you are decks to.

Q. Why?

A. The larger volume of water comes aboard you the more you are likely to sink of course; the hatches give way. In the case of my boat, if our hatches gave way, we certainly would sink, but I have seen my boat full to the rail for hours and she has not sunk yet.

Q. That is all.

Recess until 2:00 P. M.

Afternoon Session.

Thursday, February 18, 1915—2:00 p. m.

Captain REID (recalled), on behalf of the respondents, testified further as follows:

Examined.

By Mr. Leckie:

Q. Captain, I want to ask you at this time that you were in the

storm on Lake Superior and threw your hatches off, if your hatches were fastened down?

A. Yes, sir.

Q. And in the ordinary, usual way?

A. Yes, sir, in the ordinary way, with clamps.

Q. That is all.

HORATIO M. HERRIMAN, after being duly sworn on behalf of the respondents, testified as follows:

Examined.

By Mr. Masten:

Q. What is your business?

A. General manager of the Great Lakes Register.

Q. And what is the Great Lakes Register?

A. A classification society.

Q. Operating where?

A. Cleveland, O.

Q. Is there any other classification society operating on the Great Lakes generally?

A. Not to any extent.

Q. What I mean is, is the Great Lakes Register the standard for the lakes? I should hardly expect you to say so voluntarily, but that is a fact is it not?

A. It is so generally recognized.

Q. What are the functions of the Great Lakes Register with
227 reference to classification of ships on the Great Lakes? First, when was it established?

A. In 1896.

Q. And it succeeded, as a matter of fact, did it not, what was called the Inland Lloyds Register?

A. Yes, sir.

Q. Now, you may proceed, and tell us of what the work consists, or, leading up to the classification, we will say for the construction of a new ship first?

A. The function of the Register first is to approve drawings, inspect vessels during construction, and when she is built publish a rating of the vessel in our Registry, principally for the purpose of effecting insurance.

Q. As a matter of fact, do you know if the Great Lakes Register is relied upon by the insurance companies in its classification upon the Great Lakes?

A. Yes, sir, it is.

Q. And it is a fact, is it not, that a very large part of the insurance on the Great Lakes, where the vessel was insured at all, was carried in foreign companies?

A. Yes, sir.

Q. And do you know, whether as a fact, that is 50% or more or less, during the last 10 years?

A. In the foreign companies you mean?

Q. Yes.

A. Just about 50%.

Q. And that includes the English, German, French, Norwegian, Italian and even Chinese companies, does it not?

A. Yes, the way I understand it.

Q. And since the Great Lakes Protective Association was established, do you remember when that was?

A. I think it is about 4 years ago, is it not?

Q. About 4 or 5 years ago.

A. Yes, sir. 4 or 5 years ago.

Q. And do they accept the ratings of the Great Lakes Register?

A. They do, sir.

Q. What if anything, did your register or you yourself have to do with the construction and classification of the Noble?

A. We had all to do with her——

The Court: I did not understand with reference to these foreign companies. I don't think the record is clear on that.

By Mr. Masten:

Q. I will ask him. Do the insurance companies, both foreign and American, accept or not the classification of the Great Lakes Register, on vessels on the Great Lakes?

A. They do.

Q. Now you may proceed and tell us just what you had to do with the steamer Noble in her original construction and classification?

A. Application was made to us for classification of this vessel when she was about to be built. The builder submitted the drawings to us for our approval, which I went over very carefully and made several additions of scantlings on the vessel, so that she would be constructed in conformity with our rules. After that was done, it was accepted by the builders and approved by me. During construction she was supervised by us by means of my assistants, right through until the vessel was completed, and when she was completed we granted her first-class rating for lake navigation.

Q. You say first-class rating, how do you designate that?

A. We rate the vessels in the manner of percentages. On first class vessels we grant normally 100; as the vessel is of less value we decrease that percentage; as they grow older that class will drop, say from 95 or 90 or 85 or 80 down as low as 70.

Q. Do you rate any below 70?

A. No, sir.

Q. Now, the classification which is granted by your Register is for a period of how many years?

A. In a new vessel, built under our supervision, as was the case of the Noble we granted her a class for 5 years in the first place. At the end of that time, her certificate expires, and we examine her again, and if she is found to be seaworthy and sound, we grant her a certificate for another 5 years. And so on indefinitely as long as we find the vessel is worthy of the class.

Q. And that character of certificate was granted to the Ben Noble?

A. Yes, sir.

Q. Now, that will continue in force up to, we will say, the 1st of May, 1914?

A. I believe it did. I would have to look at the records to be dead sure.

Q. Have you one of the registers here, Mr. Hill?

Mr. Hill: Yes, I have the 1913 here.

Q. That will show when the certificate was granted, will it not?

A. It would show when a certificate would expire. (Referring.) Yes, she was classed up until June, 1914, in this book.

Q. And if application was made thereafter, you would re-examine her for further extension, if you found her in condition according to your rules, you would grant her a certificate?

A. Yes, sir, if she was found sufficient in every way.

Q. Mr. Logan has described somewhat this ship as to her structural strength and so forth, therefore I will not go over that with you, but I will ask if these are copies of plans which received your approval under the construction which you supervised which resulted in the classification which you say has been given?

A. Yes, sir, that is a copy of the plans which I approved.

Q. By the way, how many times during the construction of that vessel, do you think you yourself visited her personally?

A. I think about 5 times.

Q. And did you at that time have any representative at Detroit?

A. Yes, sir.

Q. Who was that?

A. John T. Webster.

Q. What if anything did he have to do with it?

A. Well, he was in close touch with the vessel during the entire construction.

Q. He was a representative of your association?

A. Yes, sir.

Q. Looking after it?

A. Yes, sir.

Q. Now, what do you say as to the general plans of construction of that vessel as to size, material, location, and all matters of that kind, good, bad or indifferent, or of an ordinary or unusual type, or was anything about *here* in any manner out of the ordinary?

A. Well, sir, I recall very plainly at the time these drawings were submitted to me, and I approved them that I felt that the vessel would be extremely well constructed.

Q. When was she constructed, Mr. Herriman?

A. I don't recall.

Q. Do you recall the year?

A. No, sir, I do not.

Q. Well, your classification will show?

A. Yes, the book will show again.

Q. It would be sometime within the year 1909, or her certificate would not expire until 1914?

A. Yes, sir.

Q. You may refer to the book to verify that?

A. (Referring). 1909, yes, sir.

Q. Have you been to the Noble and seen her and made any examination of her since she was finally accepted, after the granting of the certificate?

A. I was aboard of her in 1912, I think it was.

Q. Now, having your recollection refreshed by the plans or by your recollections, what character of a sheer had she?

A. She had a very quick sheer.

Q. Now, by a very quick sheer, that may mean lots to you builders, but it does not mean anything in particular to us, just what do you mean by a quick sheer?

A. That is the idea of the deck line at the bow and the stern was very much greater than amidships.

230 Q. At the amidships, you call that the waist?

A. Yes, sir.

Q. Now, that we may have that definitely, assuming that waist line is just awash there, what would she have, if on even keel at her waist line, at the bow and at the stern?

A. You mean her sheer?

Q. Yes. You may take the plans.

A. It is difficult to estimate the actual sheer. About 6 feet forward and 2-6 aft, I would say from the drawing there.

Q. How would that correspond with your recollection?

A. That is just about what it is.

Q. How does that sheer compare with the sheer in larger vessels, the large modern vessels, as to extent?

A. Well, in comparison to the length of the vessel, that sheer is very much greater than the larger vessels.

Q. In comparison with the length?

A. Yes, sir.

Q. What if any purpose is a sharp sheer in that kind of a vessel, such as the Noble serve?

A. Why I don't know exactly how to express it, but when the vessel is loaded deeply, she will have plenty of the ends of the vessel out of water. That is the clearest way I can put it.

Q. That expresses what I had in mind, exactly. If you can tell from recollection, or I wish you would look at the blue prints and tell us, the size of her deck beams, and her deck plating, weight and so forth. I think Mr. Logan described that in part, but I would like to have your verification of it.

A. The deck plating is $12\frac{1}{2}$ pounds to the square foot. The beams are 12 inch by 25 pound channels, spaced 3 feet apart, and the stanchions under these beams between each hatch are 12 to 31 pounds eye beams. Those are about the main factors of strength of the deck.

Q. How are those weights and sizes in a vessel of that type?

A. Strictly up to requirements for lake vessels.

Q. Do you recall whether they exceed the requirements in any regard?

A. Yes, sir, in regard to the spacing of the beams. That exceeds the requirements.

Q. *What* that designed for a particular purpose?

A. Yes, sir, I understood at the time they wanted to build a vessel so that they could carry deck loads.

Q. How was her constructions forward and aft above the main deck? How were they carried up? to the forecastle and the poop?

A. It was all built of steel.

231 Q. And in continuous construction as if she was one——

A. Yes, sir. They were carried up on the sides.

Q. How was it enclosed on its forward part and on its after part?

A. The forward part was then closed with 12½ pound side plating, and the after end I believe was the same. The dimensions are not given on this drawing.

Q. But that is your recollection?

A. That is my recollection.

Q. That was not of wood construction?

A. No, steel entirely.

Q. What openings, if any, were there?

A. I don't recall any openings except one gangway at the after end and that was water tight.

Q. How about the doors?

A. Not any that I recall.

Q. How as to her house construction, were they of wood or steel?

A. They were of steel.

Q. So that the doors would be about the only wood there was about *here*?

A. Yes, sir.

Q. And in the forecastle there are the dead lights or are they windows, or what?

A. They were dead lights fitted in the forecastle side plate.

Q. Water tight?

A. The dead lights are always water tight.

Q. How about the after part?

A. They are without dead lights, as I recall it, in the after part of the boat.

Q. Can you tell with certainty by referring to the plans?

A. No, sir, they are not shown on the drawings.

Q. And were they also water tight?

A. Yes, sir, when closed.

Q. Of course, I mean when they are closed.

A. Yes, sir.

Q. Are there many of that character of vessels on the lakes, do you know, Mr. Herriman?

A. You mean steel or wood?

Q. Either steel or wood, vessels of that character?

A. There are quite a number of wooden vessels of similar character.

Q. Have they the same common general design, single decked?

A. Yes, sir, very much like it.

Q. What if any particular purpose is sought to be served in building single decked vessels of that type?

A. My idea has always been so that they can always load the vessel deeply and yet have the ends out of water.

232 Q. That is your knowledge on the subject?

A. That is my opinion on it. I will not state my knowledge.

Cross-examination.

By Mr. Laws:

Q. The dead lights of course should open and close?

A. Yes, sir.

Q. Now, in the forecastle, was any portion of that open?

A. The after end of the forecastle on the deck. I was referring to the side plates of the forecastle.

Q. What is there open on the after end of the forecastle deck?

A. As I recall it, there is a door that goes into the accommodation.

Q. What is that made of?

A. I believe that is a wooden door.

Q. What other openings were there in the forecastle that were not sealed?

A. I believe there were some windows in the after end of that forecastle.

Q. What else was there?

A. I don't recall anything.

Q. How about the hawse pipe hole?

A. They are not closed in any vessel.

Q. Was that open, too?

A. Yes, sir.

Q. And the hawse pipes, as you call them, is the opening on the bow of the ship on either side through which the anchor chain goes?

A. Yes, sir.

Q. That is open all the time?

A. Yes, sir.

Q. Your classification of a hundred, as based upon the inspection, that was made on the vessel and the plans, when she was built in 1909?

A. Yes, sir.

Q. And that classification on that inspection ran on to 1914?

A. Yes, sir.

By Mr. Masten:

Q. I neglected to ask you about hatches, Mr. Herriman. Do you recall the size of the hatches and the number?

A. I recall they were 9 foot hatches; I am not quite sure of the number. I think there are 6 (referring). Yes, there are 6 hatches.

Q. And the coverings, were of wood or metal?

A. Wood.

Q. Do you recall the thickness of the hatch coverings?

A. 3 inches, that is, $2\frac{7}{8}$ when dressed. We call it a three-inch hatch cover.

Q. And as to the hatch fastenings?

A. As I recall it, they were fastened with the usual clamps, that we always use on that type of vessel.

Q. Can you say with certainty now what they were to be?

A. No, I cannot, except they were sufficient under our rules. I was perfectly satisfied of that.

Q. And as the flood gates or discharge gates, her water gates, or freeing ports, were they usual or unusual, or up to your requirements or not?

A. They were up to our requirements.

Q. Was there anything with reference to the manner in which the hatch coverings were placed on these hatches different from the ordinary vessel?

A. Not that I recall.

Q. As a matter of fact, they set down in the coamings, did they not?

A. Oh, yes. That type is often used on that kind of vessel.

Q. And why in this type of vessel more than in any other particular type of vessel on the Great Lakes?

A. I presume *is it* to have the benefit of carrying deck loads, so that the hatch covers may be protected on the edge by the hatches, which makes a safe coaming.

Q. Are they safer in regard to uses, or was it a mere matter of convenience in carrying deck loads?

A. I think it was done for convenience, but it makes a very much safer hatch coaming.

Q. It makes a very much safer hatch coaming, you say?

A. Yes, sir.

Q. Against the removal of hatches from an outside force, is that your idea?

A. Yes, sir.

By the Court:

Q. Is the Great Lakes Register a corporation?

A. Yes, sir.

Q. It does not do any insurance business itself?

A. No, sir, none whatever.

Q. It is simply a corporation whose business it is to give ratings on boats on the Great Lakes for insurance companies?

A. Yes, sir, it is done for the vessel. It is done just the same as you rate a man for insurance.

Q. It is done for the use of the insurance companies in the writing of insurance?

A. That is it.

Q. Now, I did not just understand about this 50%; you say 50% of the insurance is written on the Great Lakes by foreign insurance corporations?

A. Yes, sir.

Q. Do I understand you do all the rating for this 50% that is written by foreign insurance companies?

A. Practically all of it.

Q. Who is the other 50% written by?

A. By the American companies.

Q. And you do all that rating also?

234 A. Yes, sir, they accept our ratings to write their insurance on. They base their premiums on the class we give the vessel.

Q. Now, do these American insurance companies use that any differently than the foreign insurance companies?

A. Not that I know of.

Q. Then, as I understand you, practically all the insurance on the Great Lakes is written under your classification?

A. Practically all of it.

Q. About half of it being written by the American companies and about half by foreign companies?

A. Yes, sir.

Q. And as to the building of the boats, what percentage of them are built under your inspection?

A. Well, in the past 5 years I should say 50% of the vessels that have been built have been built under our supervision and to our rules.

Q. And previous to that?

A. Well, it has gradually grown larger. Previous to that perhaps not so many.

Q. What is the proper draft of water for this Noble, rated as she was?

A. That is outside of my province.

Q. Your ratings do not have anything to do with the draft?

A. No, sir, none whatever.

Q. Don't you from your examination, and can't you from your examination give me some reliable or valuable opinion as to the depth of water the ship you had inspected would draw, when loaded properly?

A. I am afraid my opinion would not be of much good sir.

Q. Can't you give me any opinion as to what would be a proper cargo for the Noble?

A. In weight?

Q. Yes.

A. No, sir, I have made no classification of her displacement, and I would not want to do so.

Q. You couldn't help me with your opinion as to the cargo she would carry?

A. No, sir, I would not want to venture an opinion on that.

Q. Thank you. That is all.

JOHN T. WEBSTER, after being duly sworn on behalf of the respondents, testified as follows:

Examined.

By Mr. Masten:

Q. What is your present occupation?

A. My present occupation is Cleveland representative of the Great Lakes Engineering Works.

235 Q. How long have you been in that position?

A. 2½ years.

Q. What was it prior to that?

A. The Detroit Surveyor of the Great Lakes Register.

Q. For how many years?

A. Seven years.

Q. And prior to that?

A. Prior to that Superintendent of the Bertram Engine Works at Toledo.

Q. And prior to that?

A. Prior to that in Scotland with different engineering and ship-building concerns.

Q. That is, your experience has covered then how many years?

A. 25.

Q. Has any of that been as a navigator or naval architect or simply as an engineer on construction work?

A. As an engineer on construction work in the shipyard.

Q. What if anything did you have to do with the construction of or with the Ben Noble during her construction while you were here at Detroit?

A. I visited it here when the keel was laid and visited her while she was being built at Wyandotte on an average of say once a week or once in ten days, went over the work, saw that it was good, and if there was anything wrong with it, I called it to the attention of the shipbuilder.

Q. Tell His Honor briefly just what this inspection or visit you would make, means, whether it was simply going there and taking a glance around or whether it involved anything else, for instance, the character of the riveting, and so forth, briefly but generally.

A. I would go into the yard and go all over the work in detail. Looked at practically all of the holds before the rivets were driven to see that they were properly bored and see that scantlings were all right; see that they were being put in properly, according to the drawings, and also go to the boiler and machine shops where the engine and boilers were being built and see that everything was in good shape, and that the workmanship was good.

Q. Having completed the work in this particular instance, what did you do, did you render one single report to the Register, or did you report from time to time?

A. From time to time.

Q. And when you made your final report as to what condition the vessel was in?

A. Everything was carried out in proper manner; the workmanship was all good; and it was all according to the drawings, as approved by the Great Lakes Register.

Q. And with that your connection with that particular ship ceased?

A. I went on the trial trip, and I think it then ceased.

Q. A trial trip would include your final report for insurance purposes, would it?

A. Yes, sir, it did.

Mr. Laws: No questions.

By the Court:

Q. Do you know how much water this ship was designed to draw?

A. No, your Honor, I do not.

Q. Aren't the insurance companies called upon or are you not called upon by the insurance companies to determine what is a proper load, and what would be an overload?

A. No, your Honor.

Q. Never called upon for that?

A. Never have been.

Q. Have you any opinion as to what would be a proper draft of water for this boat?

A. No, sir, my opinion would be of little value. That is really out of my province. It belongs to the master more than to anybody.

Q. When you build a ship, don't you build her to carry a certain load. Isn't that a part of the work of the ship builder, to build a ship to carry a certain load? Isn't that the first thing they want to know in building a ship, how much she will have to carry.

A. Commercially, sir, *sir*, but it does not bring it down to 500—No, I will not say that; it does not bring it down to a narrow point in tonnage.

Q. How close, in building a ship, do they bring it to? How close is the marine architect supposed to know the cargo the ship is going to carry when he designs it and builds it?

A. I am not a naval architect, I cannot answer that.

Q. That does not come within your duty in any way?

A. No, sir.

Q. That is all, I thank you.

THOMAS W. GOULD, after being duly sworn on behalf of the respondent, testified as follows:

Examined.

By Mr. Masten:

Q. Where do you reside, Mr. Gould?

A. In Cleveland.

Q. What is your business?

A. I am U. S. local inspector of hulls at that port.

237 Q. Of the Cleveland port?

A. Yes, sir.

Q. How long have you been in the inspection service of the United States?

A. Since June, 1906.

Q. And what had been your business prior to that?

A. Why, I had been employed as master and pilot on lake steamers.

Q. For how many years?

A. I got my first license in 1896, and immediately got a position and held positions as an officer of steam vessels from that time on.

Q. Who is the other member of the Cleveland board at the present time?

A. Mr. James McGrath.

Q. And he is the inspector of boilers and machinery, is he not?

A. His title is local inspector of boilers.

Q. Mr. Gould, do you recall in the spring of 1914, being called to the steamer Noble for any purpose in connection with your official duties?

A. I visited her and made an examination of her cargo hold.

Q. You made an examination of her cargo hold, but did not complete the examination of the ship, I would understand by that?

A. Yes, sir, that was only a part of the annual inspection of the boat.

Q. And that was made for the purpose, so that she could take her cargo, and have her inspection completed elsewhere?

A. Yes, sir. She was to be inspected elsewhere, but there was also a possibility she would have to be completed in the Cleveland District.

Q. Did you see much of the work that was done?

A. Yes, sir.

Q. And do you know where the inspection was completed?

A. I believe at Detroit.

Q. I believe you made this inspection before she left Cleveland?

A. Yes, sir.

Q. Tell the court what your inspection of the hold consisted of, and what you found.

A. We visited the steamer and went into the cargo hold, looked it over, saw the boat was in good seaworthy condition, as far as the cargo was concerned. And we examined the structural conditions there.

Q. Did you make any report of what you had done to the local inspectors at Detroit?

A. Yes, sir.

Q. What did your inspection disclose, if anything, in regard to repairs or alterations or changes or anything?

A. There was nothing that required alteration or change. I made certain recommendations for the betterment of the boat.

Q. What were they?

A. That was in regard to the steering gear.

238 Q. Tell the court what that was.

A. The steamer had her steering engine aft, and the usual shiving, the spool and transmission wire for the control of that engine

aft, and she had a vertical shaft, and that meshed in it with a beveled gear, into the horizontal shaft leading out towards the side of the steamer, and this horizontal shaft came within an inch and a half of the side plating, and also the out board bracket which held this shaft was attached to one of the frames of the boat, instead of the deck beam, and the shaft extended about $4\frac{1}{2}$ inches or 4 inches beyond this out board hanger, and I thought that the shaft, coming within an inch and a half of the side plating, and in a boat in the canal business, I thought it might be better if that was shortened up or carried further back, because she was continually bumping against docks, and in harbors against other boats coming alongside of her, and in the canal trade, if she happened to hit a pile, or something, and drove that plating in, it would put that steering gear out of business for the time being, it would very likely bind, and I thought it would be better if it was changed.

Q. You knew that type of vessel would be engaged in the canal business more or less where there were narrow channels?

A. Yes, sir, I knew she had been, from conversation with the master of the boat, and I assumed that was one of the reasons why she was built as she was.

Q. Now, if I understand you correctly, you found nothing wrong with the gear in any regard, but thought it would be better if the shaft was moved further back?

A. Yes, sir. The gear was in good working order. We tried it out and it was found to be in good working order.

Q. So that forefending against disarrangement of function in the building of the boat, you thought it might be better to make that change?

A. Exactly.

Q. You did not order that change made?

A. No, I did not think it serious enough to order it.

Q. But you recommended it?

A. Yes, sir.

Q. Do you know yourself whether or not that change was made?

A. I do not.

Q. Do you recall whether in communicating with the inspectors in Detroit you notified them of your recommendations?

A. I did, in a letter.

Q. You did not visit the boat after that yourself at all, did you?

A. No, I did not.

By the Court:

Q. Did she have an auxiliary steering gear?

239 A. I didn't go into that. I assume she had. The examination I made at that time was more to clear up the conditions existing in the cargo hold, because I knew either we or somebody else would have the rest of it later on.

Q. It is a part of your work to pass upon and determine whether or not boats and masters and crews have violated the rules or have been negligent?

A. Yes, sir.

Q. In any respect?

A. Yes, sir, in any respect that has to do with the safety of the boat.

Q. Does that include overloading?

A. I would think so. I don't know as that question was ever raised, but I think if it came to me I would rule it was one thing we had to take cognizance of and report it to some one higher up, to overrule me.

Q. How do you determine whether or not a boat is overloaded?

A. I would have to judge from personal observation. I would want to see the boat myself, and know the conditions under which she was operating, and what was contemplated as to the trip and all that, before passing on her.

Q. Take this boat, the Noble, that you inspected, what would be a proper load for her?

A. That would be hard to say. I don't know how much she carried.

Q. What would be a proper draft for her?

A. I don't know that. I could hardly tell you.

Q. That is all.

ROBERT MORRISON, after being duly sworn on behalf of the respondent, testified as follows:

Examined.

By Mr. Masten:

Q. Where do you reside?

A. Cleveland, O.

Q. What is your business?

A. Compass adjuster.

Q. How long have you been in that work?

A. About 5 years.

Q. With whom?

A. My father.

Q. How long has he been in the compass adjusting business in the Great Lakes?

A. 30 years.

Q. What if any time have you served your apprenticeship under him prior to your starting in for yourself?

A. About 4 years.

Q. What if anything did you have to do with the Steamer Noble's compass in the spring of 1914?

A. I went to her at Conneaut and adjusted her compasses
240 at Conneaut, tried them out, and went with the boat to Detroit.

Q. Did you leave the compasses in good shape?

A. Yes, sir.

Q. Were they tried in coming up the river?

A. Yes, sir, the captain tested them out on the ranges.

Q. Did you notice whether the captain had a log or not?

A. He had a log book there. I don't know which one it was.

Q. How was the weather coming across from Conneaut for Detroit?

A. It blew pretty hard that night.

Q. Do you remember what time you left Conneaut.

A. A little after dinner.

Q. What day of the week or month?

A. Saturday the 18th.

Q. And you say it blew some on Lake Erie?

A. Yes, sir, at midnight it blew hard.

Q. About what velocity do you think the wind attained?

A. Well, I don't know. I should say it was blowing about 35 or 40 miles an hour at midnight.

Q. What kind of weather did the Noble make?

A. She seemed to make good weather.

Q. Was there any sea?

A. Yes, sir.

Q. What if anything did the master say to you on the way from Conneaut to Detroit in reference to his load.

Mr. Laws: We object to that as hearsay, and as a self-serving declaration.

The Court: I would not say you were entitled to that, but the objection is overruled.

Mr. Laws: An exception, please.

A. He made the remark that night about 11 o'clock, when we were sitting in the wheel house, that the way she was going, he did not see why he could not have taken the other car of rails.

Q. When you arrived at Detroit, do you remember what day it was?

A. Sunday noon.

Q. Did you stay at the Noble any considerable time after arrival?

A. Yes, sir.

Q. Now, Mr. Morrison, did you happen to know that vessel's free board?

A. Not at Detroit, but I did at Conneaut.

211 Q. You did at Conneaut?

A. Yes, sir, I didn't measure it.

Q. You didn't measure it, but can you give an estimate of what it was?

A. Yes, sir, just forward of the boiler house it looked to me about 3 or 4 inches free board.

Q. And you say you didn't notice it here?

A. No, I didn't notice it here on account of the weather. It wasn't smooth in the River that day.

Q. Did you take a casual glance at it here?

A. I was looking down that after scupper hole.

Q. Did you notice the vessel's marks either at Conneaut or Detroit?

A. No, sir.

Cross-examination.

By Mr. Laws:

Q. Mr. Morrison, what about that course, that the vessel was going on from Conneaut to Detroit on Saturday night? About what course was she going on?

A. I don't remember what we were steering outside. He followed the shore in the river.

Q. What direction would that be?

A. I don't remember exactly *that* he was steering on.

Q. You would not know what direction that would make?

A. No, I would not say.

Q. What direction was the wind that night?

A. At midnight it seemed to me to be from the southwest.

Q. How was that striking the vessel?

A. On the port quarter I believe.

Q. On the porter quarter?

A. Yes, sir.

Q. How long did that continue? When did it begin and when did it stop?

A. It started about 9 o'clock and the spray was going over the pilot house when I went to bed.

Q. When did you go to bed?

A. Between 11 and 12 I think.

Q. So she was pretty well heading into the wind; she was taking it on the port quarter, is that right?

A. Yes, sir.

Q. The wind then was coming over her port quarter, that is, fairly well, over her stern, was it not?

A. Yes, sir.

Q. How was it then coming on her port quarter?

A. Forward—

Q. Which do you understand to be the port quarter?

A. It would be hitting abreast of the captain's room.

242 Q. Where is the port quarter of a boat?

A. By the captain's room on the port side.

Q. What part of the boat is it on, forward or aft?

A. Forward.

Q. On which side, the right hand or the left hand side?

A. The left hand side.

Q. And the wind was coming over the left hand side forward, was it?

A. Yes, sir.

Q. Mr. Morrison, isn't the left hand side forward the port bow of a boat?

A. Yes, sir.

Q. It is not the port quarter?

A. Well, it seemed to be on the quarter where she was heading.

Q. But the quarter of the boat is technically known as the after portion of the boat, do you know that fact?

A. It might be forward too.

Q. You think the quarter of the boat can be the forward part of the boat, do you, Mr. Morrison?

A. I think so.

Q. But whether it is or whether it is not, the fact is the wind was coming over the left hand side of the boat pretty well forward?

A. Yes, sir.

Q. In other words, she was running pretty nearly into the wind?

A. Pretty nearly.

Q. That is all.

JOHN F. HENSELL, after being duly sworn on behalf of the respondent, testified as follows:

Examined.

By Mr. Masten:

Q. Where do you reside?

A. Detroit.

Q. What is your business?

A. Steamboat inspector for the Government.

Q. You are one of the inspectors located here at Detroit?

A. Yes, sir.

Q. For hull and machinery?

A. Yes, sir.

Q. You have four inspectors here?

A. Yes, sir, I am the assistant inspector of hulls.

Q. How long have you been in the inspecting service?

A. Since July 20, 1911.

Q. What have you been doing prior to that?

A. Sailing steamboats and piloting.

Q. For how many years and where?

A. I had been master of steamboats going on nine years. Previous to that I had been piloting them seven years.

243 Q. All of that on the Great Lakes or part on salt water?

A. No, all on the lakes.

Q. What if anything did you have to do in April, 1914, with the inspection of the **Steamer Noble**?

A. I inspected all accessory parts of the hull equipment.

Q. What character of inspection did you make?

A. I made the inspection of her hull and her equipment in fact everything that is connected with the boat.

Q. Hatches?

A. Yes, sir.

Q. Do you remember the character of the hatches, as to size, the coverings, and things of that kind, now offhand?

A. Yes, sir. Her hatches were 12-3 inches thick.

Q. And the fastenings?

A. She had wedge fastenings.

Q. At this time I believe when you inspected her she was lying here in Detroit?

A. Yes, sir.

Q. Whereabouts?

A. At the foot of Riopelle St.

Q. Did you inspect the hold of the vessel?

A. I was down in the cargo hold.

Q. How did you get in the cargo hold?

A. Through the forward hatch.

Q. Did you have to remove them?

A. When I came there it was removed.

Q. Did she ever have any tarpaulins in the hatches?

A. She had double tarpaulins.

Q. Had the regular inspection of the hold been made before she arrived here?

A. Yes, sir.

Q. Have you received any communication or request from the inspector at Cleveland with reference to that boat?

A. Yes, sir.

Q. What were they?

A. The Cleveland inspectors stated what examinations they had made. They had made examinations of the cargo hold, and also made some recommendations in regard to the steering gear.

Q. What was that recommendation?

A. To shorten up the spool shaft for her steering gear—forward.

Q. Do you know whether that was done here or not?

A. Yes, sir, it was done here.

Q. The final inspection of that boat would be in the hands of the hull inspector or the inspector of boilers and machinery?

A. Well, when I came down there to look at the steering gear the shaft was down and they had it up to the shop to shorten it 18 inches, but the men who had done the work or the man in charge of it, he showed me where he had put the blocks. He had to put 2 blocks under in order to make a leader, to shorten the shaft 18 inches, and I noticed the work was done in a workman-like manner.

244 Q. Did you complete the inspection of that vessel, so far as your part of it was concerned, in the ordinary and usual course?

A. I did.

Q. In what shape did you find her?

A. I found her in good shape.

Q. In every respect?

A. Yes, sir.

Q. Did you find it necessary to make any recommendations?

A. No, I didn't make any recommendations, with the exception, there was a few small items such as life boats that had not been marked, according to the rules.

Q. The boats were there?

A. Yes, sir.

Q. But the markings had not been put on according to the rules?

A. No, sir. And there was a painter that was required for the life boat raft, and of course this work had not been completed when I was *done* there.

Q. Was there anything about the placing of alarm bells in the owner's room?

A. Yes, sir, we ordered alarm bells placed in the captain's room.

Q. Outside of those things did you find anything else that required alteration in any manner whatsoever?

A. No, sir.

Q. Now, Mr. Hensell, you were at the boat?

A. Yes, sir.

Q. Did you notice how she was loaded?

A. Yes, sir.

Q. What do you say to the court as to the extent of freeboard she had at the time you made the inspection?

A. I should think she had about 10 inches.

Q. Did you regard her in every respect in a fit and seaworthy condition?

A. I did.

Cross-examination.

By Mr. Laws:

Q. Mr. Hensell, do you know Mr. Frankham?

A. I know him.

Q. Was he on the boat while you were there at any time?

A. Yes, he was on the boat.

Q. She was loaded at that time?

A. Yes sir.

Q. You didn't measure her freeboard, did you, Mr. Hensell?

A. I did not.

Q. You didn't make any special note of it or anything of that kind?

A. No.

Q. It is just your recollection at the present time that she had about 10 inches freeboard?

245 A. That is about what I recollect. I looked at her at the after hatch when I went aboard her.

Q. Did she have any list in her at that time?

A. I didn't notice that. I believe she was perfectly straight.

Q. You think she was perfectly straight at that time?

A. I think so.

Q. How often did you see Mr. Frankham on the boat while you were there?

A. How often?

Q. Yes, how frequently were you there while he was there?

A. I was there about 3 hours; I don't know whether he was there or not all that time, but I saw him there on the boat.

Q. What part of the boat was he on?

A. Well, I could not say; he probably walked around the boat.

Q. Where did you see him, in what parts of the boat did you see him?

A. I think when I saw him he was on the main deck.

Q. On the main deck?

A. I think so.

Q. You didn't make any note of it?

A. Of course, I didn't make any note of it.

Q. There was nothing to charge your mind about the matter one way or the other—about this particular boat at that time, excepting you saw the hull was in good condition and so on?

A. No, I don't know as there was.

Q. You were down there to complete your inspection of the hull; there was nothing else you undertook to charge your mind with at that time?

A. Not at that time.

Q. And you were most of the time below, were you?

A. No, I would not say most of the time I was below. I was all over the boat. I looked after the life preservers and after the fire extinguishers, and tested the air tanks, and the life raft, and also the life boats.

Q. And when you got through with that you went on with your other business?

A. Yes, sir.

By the Court:

Q. Did she have an auxiliary steering gear?

A. Yes, sir.

Q. What kind?

A. Chain and hand wheel on the top of the cabin. We tried that and it worked well.

Q. You tried that?

A. Yes, sir.

Q. There are four inspectors here you say?

A. Yes, sir.

Q. Is there any division of the work between the 4?

A. Their duties are simply inspecting boats and making reports to the local inspectors.

Q. And the local inspectors also have charge of the office
246 work. There are 4 of you local inspectors?

A. Two of us are called assistants.

Q. There are 2 inspectors and 2 assistants?

A. Yes, sir.

Q. Is there any division as between the 2 inspectors; division of duty, wherein one of you inspectors would take parts of the ship—

A. Yes, the boiler inspectors inspect the boilers and machinery.

Q. And you inspect the hull?

A. Yes, and I will say when he is putting the pressure of the boiler on, the hydro static pressure, I witness that, that is my duty.

Q. Is it a part of your duty to determine whether a boat is overloaded or not?

A. I should think, in my judgment, if it was overloaded, it would be in the line of my duty to call attention to it.

Q. Did you inspect this boat at that time to see whether she was overloaded?

A. No, when I come down there, if I thought she was overloaded, I would certainly have reported it to the local inspectors.

Q. What would be a proper load?

A. The load she had in I think was all right for that time of year.

Q. How much did she usually have?

A. I could not tell you that.

Q. How do you determine what is a proper load?

A. If I load the boat?

Q. No, if you were inspecting it.

A. I would have to go by the experience I have had.

Q. What are the things that tell you that?

A. By the way I should use the boat and by the way I have seen boats loaded at different times.

Q. What do you tell by?

A. By the side she has got out.

Q. By the side she has got out?

A. Yes, sir.

Q. You go by that entirely?

A. Oh, then, I take into consideration the condition of the boat.

Q. Take the Noble as she was constructed, would that be the way you would determine, entirely by the side she had out?

A. I would take into consideration whether she was a good strong boat, well-built.

Q. Would that be the way you would judge as to whether or not she was overloaded, by the amount of side she had out?

A. Yes, sir.

Q. That would be what you would judge by, entirely?

A. Yes, sir.

Q. How much side do you say that boat ought to have out to be safe?

A. If she had water up to the deck I would condemn her;
247 I would probably not take that authority upon myself, but I would report that fact to the local inspectors.

Q. Tell me where the dividing line on such a boat between safety and danger is?

A. Well, I should imagine if she had water up to her decks, there would be a dividing line right there.

Q. But suppose she had it an inch away from the deck?

A. If she had about 6 inches out, it would be all right.

Q. Suppose she had 5 inches out?

A. Well, I could not reduce it that fine.

Q. What I am getting at is where do you think would be the dividing line between safety and danger. Don't let my questions annoy you at all, but give me your best judgment.

A. If she had 6 inches out, that is the usual way they load; that is the way I have seen them load right along, and they would not go loaded that way unless they were seaworthy.

Q. Do I understand you that 6 inches would be a dividing line in your opinion?

A. As near as I could give it to you, yes, sir.

Q. Have you any idea how much of a load that would be, tonnage?

A. Well, I should judge it would probably be in the neighborhood of 3000 gross tons.

Q. Have you any idea of the draft of water that would give her?

A. Yes, if she was on the level, she would draw 17-6; of course, she had 6 inches out, and of course there is 18 feet depth of hold.

Q. Do you mean to say you think she would carry 3000 tons and be 8 inches out?

A. I think she would, yes, sir.

Q. How much water do you say she would draw then?

A. She would draw about 17-6 I should judge.

Q. Where did you look when you saw, as you now think, 10 inches of freeboard?

A. On the side by the after hatch.

Q. Was that the lowest freeboard there was at any time, as it went over there, or did it get any more?

A. Yes, that was the lowest. She had a poop deck you know, right upon the after deck and forward I think, it was a little bit astern, I could not say how much.

Q. Did you notice the cargo to see whether it was properly loaded or not?

A. I was down in the cargo and it looked to me as though it was well stored.

Q. Did you look it over for the purpose of seeing that?

A. I was down there and it looked all right.

Q. What I want to know is whether you undertook to inspect that part, whether she was properly loaded?

A. Yes, I looked at it.

Q. How was she loaded forward? Was there anything done to prevent the rails from sticking through the bow of the boat?

A. Nothing that I saw.

Q. Do you know whether they were braced in any way, so that they would not jam through the front of the boat?

A. I don't believe they were.

Q. Do they ever do that?

A. I have never had any experience in loading steel rails. I never had a cargo of rails.

Q. Then you would not want to give me an opinion as to whether or not she was properly loaded in that way?

A. No, sir, I don't know anything about that. I never had any experience.

Q. Was she inspected after the repairs were made?

A. Yes, sir.

Q. Who by?

A. By Mr. Purvis, inspector of boilers.

Cross-examination.

By Mr. Laws:

Q. Mr. Hensell, do you say to us that it is any part of your duty, as an inspector of hulls to inspect the boat for the load that is on her?

A. Why, I think it would be a part of my duty.

Q. What boat did you ever inspect for seaworthiness on account of load?

A. We only had this one boat.

Q. What boat did you ever inspect in your entire experience as U. S. hull inspector on the question of her load for seaworthiness?

A. I have only inspected this one boat here—loaded.

Q. What were you called upon to inspect on this boat?

A. The hull.

Q. For what purpose?

A. For the purpose of seeing whether she was seaworthy or not.

Q. As to the quantity of stuff she had on board?

A. No.

Q. Did you make any report to the U. S. inspector's office as to the quantity of stuff she had on board?

A. I did not.

Q. Did you ever inspect a boat in your entire official life for the purpose of determining whether the quantity of the load she had on board, made her seaworthy or unseaworthy?

A. That is the only boat I ever inspected with a load in her.

Q. Were you asked to inspect her to determine her seaworthiness, as to the load she had on board?

A. No, I was not.

249 Q. Did you make a report on that subject to your inspectors?

A. I did not.

Q. What authority have you got for saying that it is a part of your duty as an inspector to inspect the boat for load as to her seaworthiness?

A. I think if I go down to a boat and find she is overloaded, that it would be my duty to report it.

Q. It may be your duty, but what authority have you got for that?

A. I don't know as I have any authority outside——

Q. But you have to qualify——

Mr. Masten: Let him finish his answer.

A. I guess I was going to say if I thought it was unsafe it would be my duty for the safety of life to report the fact that in my judgment she was unsafe to go whether she had a load or not.

Q. Did you have to qualify as a competent man on the question of loading when you assumed your position as an inspector of hulls?

A. No, I did not.

Q. Why would your attention be called to the question of the draft of this boat at this time?

A. Because it is the only boat I ever inspected with a load in, and naturally I would look at her.

Q. Isn't it a fact there was water on that boat when you got on her?

A. No, sir, it is not a fact.

Q. You say it is not a fact?

A. No, sir.

Q. Was there anything in any part of your duty of inspection that you had to do with, so far as determining whether she was seaworthy on account of the load she had on; was that any part of your duty?

A. I think it would be part of my duty.

Q. Did you make any report on that subject to anybody, whether she was seaworthy or unseaworthy on account of the load she had on?

A. I did not, because I thought it wasn't necessary to make any report.

Q. Have you had any experience in loading steel rails on vessels?

A. I have not.

Q. Do you have inspectors' rules by which you are governed in any way?

A. We have.

Q. Have you got them with you?

A. I have not.

Q. Do you know of any rule that requires you to make any inspection of vessels so far as the seaworthiness is concerned for loading?

A. No, we haven't any rules to that effect.

Q. You have not?

A. No.

250 By Mr. Masten:

Q. Vessels are usually inspected, are they not, without cargoes in them?

A. They are.

Q. And this was the first you have been called upon to inspect after the cargo had been loaded, that is, to complete the inspection?

A. Yes, sir.

Q. Now, let me ask you if it is not your duty to take notice of anything or everything that affects the seaworthiness of a ship, whether it consists of a hatch cover, the depth of loading the boat, the steering gear or anything else? Do not that all come within your duty?

A. I so consider it.

Q. While you don't have to qualify as an inspector on the loading of ships, you have to qualify as a competent master before you can be an inspector?

A. Yes, sir.

Q. And the duty of loading a ship lies with the master, does it not?

A. Yes, sir.

GEORGE PURVIS, after being duly sworn on behalf of the respondents, testified as follows:

Examined.

By Mr. Masten:

Q. Where do you reside?

A. Detroit.

Q. What is your business?

A. Assistant boiler inspector for the Detroit District.

Q. How long have you been connected with the Government inspection service?

A. Since 1908.

Q. And during what part of that time have you been located at Detroit?

A. Going on 3 years this spring, April.

Q. What were you doing prior to that?

A. In the Grand Haven District.

Q. I mean prior to your entering upon the inspection service?

A. Marine engineer.

Q. For how long and upon what waters?

A. I got my license as an engineer in 1892, and I think I was appointed in the service in 1908.

Q. And you were in the service continuously, were you?

A. Yes, sir.

Q. What if anything did you have to do with inspecting the Steamer Ben Noble in April, 1914?

A. Well, I went down with Capt. Hensell and inspected the boiler, the machinery, and on the following day I went down and completed the inspection.

251 Q. What did the completion of that inspection consist of?

A. Well I had a letter and his report book with me, and the items were mentioned; that is, the painting of the life boat —

Q. That is, the painting of the cubical capacity on it?

A. Yes, sir; and the fastening of the lifeline, and the alarm bell in the captain's room and the items of the forward transmission gear, the repairs of the forward transmission gear.

Q. What did the repairs consist of?

A. The recommendations, as I recall the letter, was to remove the spool on the athwartship shaft that had been too close to the ship's side, and that left the spool in, and to cut the end of the shaft off, and then run their leads to the shives and fairleaders aft; that was the only change made.

Q. When was that work done?

A. It was completed on the 22nd. That was a question of rendering it more safe removing the chains, and of its being put out of commission by a slight blow on the side of the ship.

Q. By whom was that work done?

A. By the Detroit Ship Building Co.

Q. Was it done in a proper and satisfactory manner?

A. Yes, sir.

Q. What was the last thing done upon that vessel to complete the inspection?

A. A little minor work, such as the painting of the cubical capacity.

Q. Had that been done before the cargo was complete?

A. Just about the same time.

Q. What if anything done delivered to the master of the vessel, after you completed your work?

A. Temporary certificate.

Q. What is a temporary certificate?

A. Well, it is another form of certificate which is granted by the local inspectors to permit the vessel to go on her voyage or go on commissions previous to the making out of the regular certificate.

Q. You inspectors are pretty busy about that time of the year? And the clearance work, the getting out of the regular certificates is sometimes delayed?

A. Yes, sir.

Q. And the temporary certificate is issued to authorize the boat to proceed and the permanent certificate is made out and mailed to them, is it not?

A. Yes, sir.

Q. And was that done in this case?

A. Yes, sir.

Q. It has to go through the customhouse?

252 A. Yes, sir. I don't know whether the permanent certificate was ever sent or not.

Q. But the temporary certificate was?

A. Yes, sir.

Q. As a matter of fact the permanent certificate was mailed to the boat but it never reached the boat. We have a certified copy of that.

Mr. Hill: That is all right.

Mr. Masten: There is the temporary certificate and the permanent certificate (handing to the court).

The temporary certificate is marked Exhibit 23 and the permanent certificate is marked Exhibit 24.

Q. I discover these papers are signed by Fred J. Meno and George M. Millett, they are the hull and boiler inspectors in charge of this district at present, are they not?

A. Yes, sir.

Q. It is true that the inspector's certificates and masters' licenses are signed by the inspectors themselves or the assistants?

A. They are signed by the local inspectors.

Q. The assistants do not sign them?

A. No, sir.

By Mr. Laws:

Q. Mr. Purvis, did you see Mr. Frankham down on the boat while you were there?

A. Yes, sir.

Q. How often did you see him down there?

A. I just recall seeing him when I went aboard.

Q. Where was he then?

A. I think he was standing on the main deck.

The Court: Who is this Mr. Frankham?

Mr. Laws: He is the managing owner of the ship?

Mr. Masten: Does that appear in evidence yet?

The Court: I don't think so. That is the first time I have heard about him—with the other witness.

Mr. Laws: I think it already appears in evidence.

Mr. Masten: That does not appear yet. He is not the owner or part owner.

The Court: Do you know what his relationship to the boat is?

A. No, I do not.

253 THOMAS W. GOULD (Recalled), on behalf of the Respondents, testified as follows:

Examined.

By Mr. Masten:

Q. Mr. Gould, if you were called, in the course of your official duty, on board any steamship, and found her unseaworthy in any regard, would you permit her to proceed?

A. I would not.

Q. And if that unseaworthiness consisted in either the manner of stowing of her cargo or the extent of her cargo, would you consider it within or without your duty to have it remedied before you allowed her to proceed?

A. I would see she was made seaworthy in my judgment before I would allow her to proceed or revoke her certificate or withhold it in some way.

By the Court:

Q. How would you tell whether she was overloaded or not?

A. I would have to take into consideration the trip that was contemplated, the cargo she had on, and the depth she was in the water, and I would take into consideration her construction.

Q. You saw the Noble?

A. Yes, sir; I saw her light, but I didn't look at her marks forward and aft. I didn't know how deep it was possible to load her.

Q. If you looked at her marks they would help to determine about how deep she could go?

A. Yes, but of course some of the boats have their marks shy. Some of them have them higher and that would be only an aid after the boat was loaded, and I would see in what condition she was in after she was loaded. I did not look at her at that time with any idea of making up my mind of how deep she could go. I didn't contemplate that, and the overloading of her.

Q. Can you tell me now how deep down she ought to go in the water?

A. How deep she ought to go or could possibly go?

Q. No, how deep she ought to go to be safe?

A. Why, taking into consideration the conditions, and the time of the year, and everything, I should think she ought to have 2 or 3 inches of free board, boats of that class.

Q. An ordinary steamer, how much?

A. Why, decks to. I have been on old wooden boats, schooners, and we have loaded decks to with iron ore, and she weathered pretty heavy breezes.

254 Q. Would that be safe?

A. She came through all right; yes, sir.

Q. Just as safe as with a foot out?

A. Oh, I think the more you have out, the safer the boat is.

Q. You would not carry that clear to being light, would you?

A. No, I don't think so. Some classes of boats are safer loaded than light.

Q. Where is the point where they become dangerous?

A. Well, that becomes an element on different boats—

Q. Normally?

A. It is hard to tell without seeing the boat in a loaded condition.

Q. Haven't you seen her loaded?

A. I may have. I don't remember of seeing her loaded. I suppose in the times that I have been around the Lakes I have seen her loaded. But she has been only one of many.

Q. What do you mean when you say 2 inches free board at that season of the year, do you mean it would be as safe as with a foot out?

A. I don't think it would be just as safe, but I would not begin to put my foot down on her that she was a boat unsafe to go if she had, say, 3 inches out.

Q. Take it with the Noble, where do you think she begins to get more unsafe, so that the danger is increased as the load is increased, how much freeboard?

A. That would be hard to tell. It becomes an element of her cabins and everything being tight. I don't think if I was master of the boat that I would hesitate to take her out in any ordinary weather or in any ordinary storm, if she had, say, 6 inches of freeboard, or in some of these big storms. I went through the 1905 storm in the Steamer Hill, and I think she would have been safe with 6 inches, and I think the Noble would have been safe with 6 inches.

Q. Where were you in that big storm?

A. I was on the Steamer Hill, and we went up through the storm and entered Two Harbors.

Q. Where were you when the storm was the worst?

A. Probably abreast of the west end of the Isle of Royale and from there to the end, to Two Harbors.

Q. Did you go in Two Harbors?

A. Yes, we went into Two Harbors. It was rather tricky work, but we accomplished it.

The Court: Is there anything in these papers about tonnage?
Mr. Masten: Nothing except the gross tonnage.

255 By Mr. Laws:

Q. How much freeboard did the Hill have on that ship?

A. Oh the Hill was differently constructed, was a differently constructed boat entirely.

Q. And you had about 8 feet freeboard, didn't you, somewhere around there?

A. I guess we must have. We were drawing about 16 feet aft and about 8 or 9 feet forward, all we could get her down.

Q. What freeboard would that give you then?

A. About 12 or 14 feet—aft probably.

Q. What would be the lowest?

A. That would be the lowest.

Q. So that you went through that storm and at the lowest port you had about 12 feet freeboard?

A. Something like that.

Mr. Leckie: You would like to have her down deeper if you could get her?

A. We certainly would. We had her down deeper but we had to take the water out of her.

Q. If you would like to have her down deeper than that, where would you have reached a point where you would hate to have her deeper?

A. That is pretty hard to tell. She would have been better off if she was pretty well loaded.

Q. She gets finally down to a point where she is worse?

A. Yes, sir.

Q. Can you give me an idea where that dividing line is?

A. If we get them down forward say about to 12 feet, we then could have afforded to put her down a little deeper aft. We had her down deeper than 16 feet, and we had to lighten her up, because the seas came over her aft.

Q. If you were going to load her so she would ride the best, how would you trim her?

A. I would like to have her about 15 or 16 forward and about 17 aft.

Q. As she goes from that either way she is worse in a big storm?

A. Yes, I believe she would labor worse than in the sea. I think she would recover and answer her helm and free herself better at that point than either below or above it. If she is lighter you have to throttle the engine and you have got to get her down as much as possible.

Q. How would you trim the Noble to load her the best?

A. I would have to become acquainted with the boat to answer that.

Q. You have seen her?

A. Yes, sir.

Q. Suppose you were hired as captain the first time to sail

256 her, and you were put in that boat for the first trip, how would you load her and trim her to have her ride the best?

A. Irrespective of being fully loaded?

Q. Yes, load her so she will ride the easiest and the best, and without reference to how much she will carry.

A. I understand since I have been here that she had 18 feet molded depth and on that basis I would probably want to see her down to about 15, and 16 aft, say 16, and lighter than that forward, probably 15, and a foot by the stern or a foot and a half.

Q. What do you mean by that?

A. Lower aft than forward.

Q. That is what you mean by a foot by the stern?

A. Yes, sir. I think she would relieve herself quicker of water and answer her helm quicker. That would be the ideal condition I am talking about.

Q. How much would she carry on that?

A. You have got me on that.

Q. These boats are built for certain water lines loaded, by the architect?

A. I believe so.

Q. Do you think that is about the way she was built, loaded?

A. No, no; I didn't contemplate that is what she is built for. I contemplated that would be the ideal condition to meet a sea.

Q. 16 feet aft and 15 forward?

A. Yes, that would put her down so she would not bound.

Q. And either way from that would not be so desirable, according to your opinion?

A. Yes, sir.

By Mr. Laws:

Q. On your boat the Hill, I think you give His Honor what you considered as the best draft and trim of the boat, which was about 15 feet forward, was it, Capt. Gould?

A. Say 15 or 16 possibly, in that neighborhood.

Q. How much aft?

A. About 17 or 17-6.

Q. That would put the Hill in the best condition for handling?

A. Yes, sir, that is another case of ideal conditions.

Q. What freeboard would she have with that?

A. Well, she had 30 feet molded depth.

Q. What freeboard would that give here?

A. You can subtract the forward and after draft.

Q. It would be from 12 to 15 feet?

A. Yes, sir.

Q. The minimum would be 12 feet of freeboard?

257 A. Yes, sir. I don't think, however, that in arriving at a conclusion that the Hill would be a boat that would compare with this boat, because she was of a different type of boat.

By Mr. Leckie:

Q. As a matter of fact, it would not be a fair comparison at all?

A. No, I don't think it would.

Q. The ideal condition that you have told about——

A. Yes, sir.

Q. As a matter of fact that boat when she is loaded, her draft is regulated by what you can get through the canal, was it not?

A. Yes, sir.

Q. And if that boat had her main deck the same as the Noble, and her spar deck up 10 feet, and she was cut down to her main deck, when she was loaded for a draft through the canal, her main deck would be under water, would it not?

A. Let us see, I would estimate it would be just about that; yes, sir.

JOHN MONAGHAN, after being duly sworn on behalf of the respondent, testified as follows:

Examined.

By Mr. Masten:

Q. Where do you reside?

A. Duluth, Minn.

Q. What is your business?

A. Inspector of steam vessels; hulls.

Q. How long have you been connected with the service?

A. A little over 27 years.

Q. All on the Great Lakes?

A. Yes, sir.

Q. And prior to that time what were you doing?

A. Sailor on the lakes.

Q. And for how many years?

A. About 18 years.

Q. You remember Captain, do you not, the loss of the Steamer Noble?

A. I do.

Q. Some of the wreckage which came ashore in the vicinity of Duluth included a hatch cover, did it not?

A. Yes, sir.

Q. Did you examine that hatch cover?

A. I examined several of them.

Q. Several of them?

A. Yes.

Q. What character of material were they?

A. Fine.

Q. Size, as to thickness?

A. About 3 inches, I think. I have the measurements. I think it was about 3 inches, probably 3 inches dressed.

Q. And in what condition, I mean, as to the condition of the wood?

A. Well, there were several of them broken.

258 Q. Was the wood sound?

A. It was sound.

Q. You say several of them were broken?

A. Yes, sir.

Q. Did you examine any of the other wreckage?

A. There were strong backs there among the wreckage that goes under the hatch; those were pine and I think they were about 6 inches in diameter and about 4 inches the other way.

Q. Good sound timber?

A. Yes, sir; I didn't find anything that was unsound.

Q. That is all.

Mr. Laws: No questions, Captain.

ROBERT CRAIG, after being duly sworn on behalf of the respondent, testified as follows:

Examined.

By Mr. Canfield:

Q. Where do you reside?

A. Detroit.

Q. What is your business?

A. Marine engineer.

Q. And what was your business in 1914?

A. I was sailing the tug Miner.

Q. As master?

A. Yes, sir.

Q. Whereabouts was she sailing?

A. In the Detroit River here.

Q. Were you acquainted with the Steamer Benjamin Noble?

A. Yes, sir.

Q. Did you see her in April, 1914?

A. Yes, sir.

Q. What did you have to do with her?

A. Inspected her boilers to furnish water pressure with.

Q. That was the time the United States inspectors were examining her here?

A. Yes, sir.

Q. Did you go on board the steamer?

A. Yes, sir.

Q. Where was she lying?

A. At the foot of Riopelle Street.

Q. Do you recall who the inspectors were?

A. Yes, sir, Captain Hansell and Mr. Purvis.

Q. Did you see the captain of the Noble?

A. Yes, sir.

Q. What was he doing?

A. He was walking around the deck there, him and Mr. Frankham, and other men that were doing the repair work on her.

Q. Did you hear any conversation between them?

A. Yes, sir.

Q. What was it?

259 Mr. Laws: We object to that as hearsay evidence and a self-serving declaration.

Mr. Canfield: Aside from the fact that previously there has been much more diluted hearsay testimony given here by the claimant in the testimony of what this captain was said to have said to somebody else, I think this is competent for the purpose, not of proving the fact, but of explaining what followed.

The Court: That was admissible from their standpoint on the ground of admission; I do not know what the rule would be on the ground that it is within the knowledge of the deceased——

Mr. Canfield: That would keep it out if rigidly applied.

The Court: That objection was not raised; it was admitted as an admission; this is not admissible for that purpose. However, you may put it in the record.

Mr. Hill: Give us an exception.

Q. What was the captain of the Noble saying to Mr. Frankham?

A. They were talking about different loads and boats and one thing and another and Mr. Frankham told him he expected him to get pulp wood down for one thing, and he said he did figure on a load of grain from Duluth down, and when he got down again his cargo up would be altogether likely a load of rails.

Q. Did you hear anything said as to some rails that had been left at Conneaut?

A. He said he left a car there and was very sorry he left it.

Mr. Laws: Wait a moment. I want to hear the question and answer read. He is volunteering something.

(Testimony read.)

Mr. Laws: I object to that.

The Court: I will let you put it in the record, although I don't think it is admissible.

Mr. Hill: Exception.

Q. Was anything said as to the draft of the vessel?

Same objection, ruling and exception.

260 A. Why the Captain said he could just as well have put the other car of rails on, and Mr. Frankham spoke up to him and told him: Young man, don't be sorry for anything that has been done already. Nobody is criticizing you for what should have been done; and he said if we take a load of rails up the next time you be sure and have for me 3,000 tons.

Q. Where were you at that time?

A. Standing right alongside of No. 5 hatch.

Q. Was it the Captain of the Noble who said to Frankham about having 3,000 tons the next time?

A. Yes, sir.

Q. While they were talking there did you observe the draft of the Noble?

A. The captain of the Noble says the boat ain't as deep, any-

where near as deep as them Quebec boats; he was mentioning a couple of Quebec boats; and he says to Mr. Frankham, have you got a rule? And I says, here is a rule, and I reached in my pocket and pulled out a rule and gave it to him. The captain took the rule and he went over to take the measure and somebody just spoke to him then, and he handed me the rule, and I put my hand down through the scupper of No. 5 hatch, and she had a little bit better than 10 inches of freeboard.

Q. On which side of the boat?

A. On the starboard side.

Q. Did you observe whether the hatches of the Noble were off?

A. The forward hatch was off all with the exception of one hatch.

Q. Did you observe the load in her?

A. Yes, sir.

Q. About how far up her load did that come?

A. I should judge between 5 and 6 feet.

Cross-examination.

By Mr. Laws:

Q. You say you measured her on the starboard side?

A. Yes, sir.

Q. Which side was lying towards the dock?

A. The port side to.

Q. You didn't examine the port side?

A. No, sir.

Q. Did he have a list in her?

A. Not that I noticed.

Q. What day was that you were there?

A. The day they inspected the boilers.

Q. And what day was that of the month or week?

A. I could not tell you.

Q. I understand you to say the captain and Mr. Frankham discussed the load that was on her, talked about the load that was on her?

261 A. Yes, sir, him and the captain went on talking about leaving the car of rails, and I heard Mr. Frankham say don't be sorry for what you have done, nobody is finding fault with you.

Q. He was satisfied with what the captain had done?

A. Yes, sir; that seemed to be the way.

Q. Did he raise any question with him about not having taken the other car at all?

A. No, sir.

Q. The load that was on board the boat was discussed between Mr. Frankham and the captain?

A. Yes, sir.

Q. Talked about?

A. Yes sir.

Q. How much did the captain say he had on board?

A. He didn't mention what he had on board.

Q. He spoke about having left one ear behind, did he?

A. Yes, sir.

Q. And who is Mr. Frankham?

A. He is a marine engineer, that is all I know of him.

Q. Has he anything to do with the Capital Transportation Company?

A. I have heard he had; I could not tell you for sure.

Q. He appeared to act as the owner of the boat?

A. He appeared to me to be the manager of the boat.

Q. As the manager of the boat?

A. Yes, sir.

MELVIN A. BUDD, after being duly sworn on behalf of the respondent, testified as follows:

Examined.

By Mr. Leckie:

Q. How long have you sailed, Captain?

A. 30 years.

Q. How much of that time as master?

A. 22 years.

Q. During any part of that time were you in single decked boats?

A. Yes, sir.

Q. Were you ever in a boat of similar type to the Noble?

A. Yes, sir; I was 10 years in the Niagara.

Q. She is a little bit different type?

A. A little bit different type, but about on the same model, a little larger.

Q. Did you ever carry steel rails with her?

A. No, sir; I had nothing to do with steel rails.

Q. Did you ever carry iron ore with her?

A. Yes, sir.

Q. In single decked boats of that type what is the custom on the lakes in regard to the method of loading, in regard to the number of feet?

A. Anywheres from 4 to 6 inches.

262 Q. Have you seen the Noble?

A. Yes, sir.

Q. And more or less familiar with her?

A. Yes, I have been aboard of her; I was board of her once in Erie.

Q. If she was loaded with steel rails in Conneaut so that she had an inch or two of freeboard there, leaving, and full of fuel, say 150 or 160 tons, about what would her freeboard be at the Soo? Assuming that she burns about the ordinary amount of coal of a boat of that type?

A. Well, the Noble, a boat of her type, and the way her coal bunker was situated, she ought to come up in the neighborhood of 7 or 8 inches, in the neighborhood of the Soo. Her boilers and

er fuel bunkers are over her boilers, and she would have a tendency to raise quicker, as the fuel was further aft.

Q. And on account of being so far aft and burning that amount of fuel out, she would raise faster?

A. Yes, sir.

Q. And that would give her more freeboard?

A. Yes, sir, it would give her more freeboard at the lower part.

Q. About what freeboard would that give her by the time she got to the Apostle Islands?

A. If she was, as they said, at Conneaut, about 2 inches out, she ought to be 8 inches by the time she got to the Apostle Islands.

Q. In your practical experience on the lakes, captain, in that type of boat, what would you say about the reasonableness and seasonableness of that type of boat to carry a load to Duluth in the spring of the year with 8 inches of freeboard?

A. That would be perfectly safe.

Q. You have done that yourself?

A. I have, I have done quite a bit of it.

Q. And done it in storms, have you?

A. Yes, sir.

Cross-examination.

By Mr. Laws:

Q. What is the size of the Niagara, captain?

A. She is about 286 feet over all; 42 feet beam and 20 draft.

Q. Depth of hold?

A. Yes, sir, molded depth.

Q. Have you been out with her in Lake Superior in April?

A. Yes, sir.

Q. Loaded?

A. Yes, sir.

Q. With what, Captain?

A. Iron ore, coal and grain.

Q. What freeboard did you have then?

63 A. I have had her down within 3 or 4 inches freeboard and have gone through safely.

Q. Did you meet some severe storms?

A. I have met quite a number of severe storms.

Q. You expect of course severe storms in April on Lake Superior?

A. Of course you never know when the storms come, and you must take them as they come.

Q. You must take them when they come and be prepared for them?

A. Yes, sir.

Q. And you have always come through with your boat?

A. Yes, sir.

By Mr. Leckie:

Q. What sort of hatches did the Niagara have?

A. Hers laid on top of the coaming, 3 inches in thickness.

Q. How high were the coamings?

A. Between 8 and 9 inches high.

Q. You heard the coamings and hatches of the Noble described?

A. I have not heard them tell about the height of the coamings.

Q. 15 inch coamings and an angle on the coamings so that the hatch set inside of the angle, so that it was encased all around 3 inches. That would be a higher hatch than they had on the Niagara?

A. Yes, sir. That would be more protection because they would be higher.

Q. You want them up higher than the hatch?

A. Yes, sir, it would be better.

By Mr. Laws:

Q. What draft did the Niagara have when she had 3 or 4 inches freeboard?

A. Oh, anywhere 18-10 to 19 feet.

Q. Aft?

A. Yes, sir.

Q. And what forward?

A. About 4 or 5 inches less.

Q. She is a steel boat?

A. Yes, sir.

By the Court:

Q. Would you consider that a proper loading of the Niagara for heavy storms, that depth aft and forward?

A. Yes, sir.

Q. If you had your choice in a heavy storm, to ride it the very best way possible, from free to loaded decks, where would you pick, what draft of water, for the heaviest gale?

A. All the time I was in those type of boats I was loaded down, and carried my full load, and when I would come to the big storms I would head right into them.

Q. I guess you don't understand the question. If you knew you were going to get into a heavy storm and have to ride it, you
264 would not have your boat light, would you?

A. No, sir.

Q. You would not load her decks to?

A. I would load her to the marks, that I have already carried.

Q. Where would you load her to for the purpose of safety? Now I am not asking you for what you did.

A. I would have her with 4 inches of freeboard.

Q. Did you always load her down to that point?

A. Yes, sir.

Q. In all weather?

A. Yes, sir.

Q. Never went lighter?

A. No, sir.

Q. Did you ever go heavier than that?

A. I have gone heavier than that. I have went down within 2 inches freeboard.

Q. What time of the year?

A. The fall of the year.

Q. Why did you do that?

A. Well, lots of times at the iron ore docks loading ore you are liable to get a little extra ore shot into you. There is some that gets away from them on the spout and it is carried in that way. I have never tried to go beyond my marks, but sometimes you get a little extra shot of ore in her. That is all.

Q. What makes you think she is safer loaded down to 4 inches than she is 6 inches?

A. I didn't say she was safer between 6 and 4.

Q. I understood you to say you considered her safer at 4 inches freeboard than any other place?

A. I considered her safe. I did not say safer.

Q. I asked you for the safest place. Now put that load for her at the very safest place, and for the worst seas, what would you say that was?

A. Anywhere from 4 to 6 inches.

Q. You would say then 8 inches would not be safe?

A. Yes, just as safe.

Q. How about 3 feet?

A. Well, of course that is quite a jump.

Q. I was trying to get it at the safest place. What about 3 feet? Is it just as safe at that?

A. Oh, that is is good deal safer.

Q. What do you mean by that. When I asked you for the safest place I wanted you to give me what you considered the safest place was, and now you say that 3 feet is safer. Do you mean that now?

A. Oh, you can go on and say a boat light is safer yet.

Q. Do you mean that now? Do you mean a boat for a
265 heavy sea is safer light than she is with some load in her?

A. No, sir.

Q. I asked you for the safest place, Captain, and you say she is not so safe light as she is with some load in her, is that right?

A. I would say if you want the safest load anywhere from 4 to 6 inches. I would say that is safe.

Q. But you just told me it wasn't as safe as 3 feet freeboard?

A. Well, I will take my chances on the 4 and 6 inches.

Q. But you are going to answer my question, now. You may sail your boat but you are going to answer my question?

A. She is just as safe at 4 inches as at 3 feet.

Q. And what did you mean by telling me it was safer at 3 feet?

A. Of course she is a lot lighter.

Q. Will she stand any more sea without trouble?

A. I don't know as she will stand any more sea.

Q. I just want your best opinion. I am not asking now about the load at all, but to trim the ship so that she will ride heavy storms in the very best way that you can trim her without any

particular limit to her load, only to make her in the best possible shape for a heavy sea?

A. As near as I understand I say she is safe, and I consider it that she is just as safe with 6 inches freeboard.

Q. Just as safe at 6 inches as she is at 3 feet?

A. Yes, sir.

Q. That is all.

By Mr. Laws:

Q. I would like to ask the single question: You said, Captain, that the Niagara would have her safest draft, say at 18 feet and 10 aft, and 18 feet and 6 forward—did I understand you to say that?

A. I said about 6 inches freeboard; that would be about that draft.

Q. That would be her best draft, would it? 18-10 aft and 18-6 forward?

A. Yes, sir.

JOHN MONTGOMERY, after being duly sworn on behalf of the respondent, testified as follows:

Examined.

By Mr. Leckie:

Q. How long have you been a master on lake vessels, Mr. Montgomery?

A. Nine years.

266 Q. And during that time have you done anything with single decked boats?

A. Yes, sir, I have.

Q. What one?

A. The Niagara.

Q. The same Niagara that Capt. Budd was in?

A. Yes, sir.

Q. Did you ever carry steel rails and iron ore with her?

A. Yes, sir.

Q. What was your practice and what has been the practice on the lakes, as you have observed it, in the matter of freeboard in those kind of boats when they are loaded with iron ore, or steel rails?

A. We generally load them to about 6 to 4 inches.

Q. And that is of course at the lowest place?

A. That is at the lowest place.

Q. Were you familiar with the Noble?

A. Nothing more than just seeing her in rivers and lakes.

Q. Have you heard the description of her fuel bunkers being well aft behind the smokestack?

A. I have. Well, I just heard Capt. Budd relate it, that is all.

Q. Assuming that her fuel bunkers are back of the smokestack, that is considerable further aft than ordinary?

A. Yes, sir, further than the Niagara, yes, sir.

Q. If that boat left Conneaut with full fuel, say 150 or 160 tons, could you give us any idea of how much she would raise and how much more freeboard she would have at the Soo?

A. Well, I should think it would come up to about 6 or 7 inches, in my judgment.

Q. How did the Niagara come up under similar circumstances?

A. She came up about 9 inches from Ohio points to Duluth.

Q. And with the description of the coal bunkers in this Noble, she would come up at least that much?

A. Yes, sir, she ought to come up more.

Q. From your practical experience in sailing these kind of boats, and weathering storms and all that,—have you been out in storms with the Niagara?

A. I have.

Q. What would you say about the reasonable seaworthiness of a boat of that type with 6 inches free board for the ordinary gale of wind that could be expected in April on Lake Superior?

A. I would say the 6 inches was a reasonable safety point for going out in a sea.

Q. Are there quite a number of those boats on the lakes?

A. There are.

Q. Have you ever weathered any of the notorious big gales?

A. I was out in the blow last fall.

267 Q. I mean with this particular type of boat. Were you in the 1905 gale—

A. No, sir, I was not.

Q. If when this boat was in Conneaut a man on her decks shoved his hand down in the scupper to get the freeboard, until he touched the water, and he indicates that as a couple of inches, and she has 18 feet molded depth, when that boat got to the Soo, burning out what fuel she would burn between those two points, if the man at the Soo said she was drawing 18-3 aft and 18 feet forward, that would be an impossibility, would it not—unless they put water in her or something?

A. I don't catch your question.

Q. Well, have you heard them describe this boat as 18 foot molded depth, and the scupper along near the after hatch, No. 5 or No. 6 hatch, would be the lowest point, would it not?

A. I would judge so.

Q. If a man reached down and touched the water with his fingers leaving a couple of inches freeboard, by the time she got to the Soo she would have raised considerable, would she not?

A. Yes, sir.

Q. And have more freeboard?

A. Yes, sir.

Q. So at that time at the Soo she could not very well have been drawing 18-3 aft and 18 forward, could she?

A. Impossible, unless they put water or something else into her.

Q. About what is the customary way of loading those boats as to how much by the stern, leaving below?

- A. They generally load them about 4 to 6 or 7 inches by the stern.
Q. Leaving below?
A. Yes, sir.
Q. Are you taking into account the fuel there?
A. Yes, sir, after they are fueled, I mean.

Cross-examination.

By Mr. Laws:

- Q. I would like to ask you a question, Captain; were you ever on the Benjamin Noble?
A. No, sir.
Q. What is the nearest you have come to her?
A. Oh, I would say 75 or 100 feet.
Q. Was she under way then?
A. Yes, sir.
Q. Whereabouts?
A. In the Soo River.
Q. Did you ever meet her out in the lake close on?
A. I would not say I had.
Q. And you certainly never met her out in a storm, did you?
A. No, I don't recollect of ever seeing her out in a storm.
268 Q. What time of the year did you see her in the Soo River?
A. I think it was in the fall.
Q. What fall?
A. I think it was a year ago last fall.
Q. What did you see on her?
A. I don't remember.
Q. She was loaded?
A. Loaded.
Q. What was her draft?
A. I don't know.
Q. What was her freeboard?
A. I would not say.
Q. What is the size of her engine?
A. I don't know.
Q. What is the size of her boilers?
A. I don't know.
Q. And what is the size of her grates?
A. I don't know.
Q. Can you tell anything about the amount of fuel a boat will consume without knowing something about her boilers, her engines and grates?
A. Nothing more than my experience with that class of boats.
Q. Can you tell anything about a boat or about the amount a boat will consume per hour unless you know something about the boilers, engines and grates?
A. No, I could not tell even if I knew that. I might give an estimate of it though. I might say also from the speed of the boat.

Q. What speed has she?

A. About 10 or 11 miles an hour.

Q. How many revolutions of the propeller?

A. I don't know.

Q. Is that in good or bad weather?

A. I didn't hear that stated either.

Q. So you don't know about that?

A. No, sir.

Q. You said she would come up about 6 inches between Conneaut and the Soo, did you?

A. I would judge so.

Q. Where were you figuring the coal bunkers were on the Noble?

A. Aft of the smokestack.

Q. Suppose I would tell you they were forward of the smokestack, would that make any difference?

A. Yes, sir.

Q. How much difference would that make?

A. Probably an inch.

Q. How much fuel would you figure was on her when she left Conneaut, and when she got to the Soo?

A. I didn't figure that way. I figured from what my own boat came up.

239 Q. Your own boat is a different type of boat?

A. It is similarly constructed.

Q. Isn't she a bigger boat?

A. A little bit.

Q. How does her displacement compare with yours?

A. She has a larger displacement.

Q. How does her cargo stow as compared with the Noble?

A. They store rails in her I presume the same as they do in my boat.

Q. Have you tried rails on the Niagara?

A. I have.

Q. How long ago?

A. The year I was in her.

Q. When was that?

A. Eight years ago.

Q. How many cargoes did you carry of rails?

A. Oh, possible 10 or 12.

Q. In one season?

A. Yes, sir.

Q. Were they rails?

A. Yes, sir.

Q. From what point to what point?

A. We went to different points.

Q. What did you load her down to, what draft?

A. Oh, 18-10 or 19 aft.

Q. And what forward?

A. About 18-6 or 18.

Q. What freeboard with that?

A. About 4 to 6 inches.

Q. As a matter of fact, with your boat she would have 14 inches freeboard, wouldn't she, with that draft?

A. No, I don't think she had that much.

Q. I say, as a matter of fact, with your draft wouldn't she have 14 inches freeboard.

A. I don't think so.

Q. How do you determine that? Can you look at the lake register and determine that from that?

A. No.

Q. You could not do that?

A. No, I don't know anything about it.

Q. The Niagara is not a boat that carries pulp wood is she?

A. I don't know.

Q. You don't know anything about that?

A. No, sir.

Q. What boat have you been on since that time as master?

A. After I got out of her I went into the Adam Cornelius.

Q. What kind of a boat is that?

A. 8,500 ton boat.

Q. Were you master of her?

A. Yes, sir.

Q. What boat have you been in since that?

A. I sailed her one year and I went on the Theodore H. Wickware, and I have been in her ever since.

270 Q. What kind of a boat is she?

A. She is a 9,000 ton boat.

Q. What do you carry in her?

A. Iron ore, coal and grain.

Q. Steel rails?

A. No.

Q. Did you ever carry rails in the one prior to the one you are in now?

A. No.

Q. Those boats are all larger boats than the Noble, and a good deal larger than the Noble, aren't they, the last boats you have named?

A. Yes, sir.

Q. Did you ever sail in a boat like the Noble of about the same size and the same type in any one of the three or four that are built on her model recently, or the Niagara, of similar construction?

A. She was not the same model as the Noble. She was not exactly the same.

Q. You would not want to undertake to pass upon what would be a proper and seaworthy load for a boat during a storm at that season of the year, if you had never been in her and did not know anything about what she had carried before, would you?

A. Why, if I was consigned as master of that boat I would have to, wouldn't I?

Q. What would you do if you were signed as master of that boat, and you were ordered to take a cargo of rails from Conneaut, Ohio, to Superior, Wisconsin, what would you do to find out what load she would take?

A. I would size up the boat.

Q. You would size up the boat?

A. I would see how much I would have out, and I would see how she was constructed, the draft and so on.

Q. Suppose you had no experience with that construction before, what would you do to determine what was a safe load to take?

A. I would decide from the condition of things aboard of her. I would base my opinion upon the conditions as I saw them and things around the boat.

Q. How would you determine the amount the boat would carry when you expected heavy winds?

A. I would judge from past experience.

Q. Suppose you had had no past experience, how would you do it?

A. I have been in boats similar to her and I would consult my own experience.

Q. Suppose you had had no experience on any similar boat to her, what would you do?

A. I would have to go by the record then. But I have had some experience.

Q. I assumed you had no experience on any similar boat, and you were ordered to carry a cargo of rails from Conneaut to Superior, how would you determine what was a safe load line on that boat, a safe load to carry and a safe freeboard, draft, if you did not know anything about the boat?

A. I would go from my past experience and judgment.

Q. Just tell us what that means. I don't know what it means?

A. What I have done in the past, the way I have loaded other vessels.

Q. Is that the best answer you can give us as to what you would do to determine what would be a safe load for that particular boat, we will say, the Noble, assuming you had never been on her before, assuming you had never sailed in a boat like her before, and you were asked to take a quantity of ore on her from Conneaut, Ohio, to Superior, Wisconsin, a load of steel rails, is that the best answer you can give us to that?

A. I would load her according to my judgment.

Q. That is all.

Mr. Leckie:

Q. It is always the captain's judgment in loading a boat, is it not, on the lakes?

A. Yes, sir, that is always my experience.

Q. If there is a log book on that boat from previous years, assuming now you are appointed to a new boat, as my friend assumed, would you pay any attention to that log?

A. I would. I would consult it.

Q. Having consulted that, you would stow your cargo in her?

A. Yes, sir.

Q. And you would stop her when you got the draft or freeboard where it looked right to you?

A. Yes, sir, according to my judgment, where it would be reasonably safe.

Q. Captains are frequently changed here on the lakes, are they not?

A. Yes, sir.

Q. From the time a captain goes in a new boat he has had no past experience in that boat?

A. Yes, sir.

Q. All he can do is to take with him the judgment and experience he has had in other boats?

A. Yes, sir, that is it.

By the Court:

Q. Did you ever get the log of the Niagara and go over that to see what loads she had carried when she first came out?

A. Yes, sir, I referred to the log book for that was there for previous years.

Q. About how many tons did you carry on the Niagara?

A. I think our average cargo of steel rails would amount to about 3200 to 3400 tons.

272 Q. How long had she been out when you sailed her?

A. Now I could not say. She was out quite a number of years.

Q. How many tons did she carry when she first came out?

A. The year that I took her she never carried steel rails, until I went in her. She was in the coal and grain trade. She had never been loaded down as deep before until I went in her. She used to load down deep with ore and coal.

Q. Do you know how much she could carry when she first came out?

A. No, I would not want to say. I could not say.

Q. That is all.

WILLIS A. GARU, after being duly sworn on behalf of the respondent, testified as follows:

Examined.

By Mr. Leckie:

Q. What boat are you master of, captain?

A. The Jessie Spalding.

Q. How long have you been in the Spalding?

A. 13 years.

Q. And the Spalding which you now refer to is the Spalding that has been frequently referred to in this trial?

A. Yes, sir.

Q. Of the same or similar type to the Noble?

A. Yes, sir.

Q. Have you ever carried rails in her?

A. Yes, sir.

Q. And iron ore?

A. Yes, sir.

Q. Did you ever load at Conneaut?

A. Yes, sir.

Q. Did you ever load rails there?

A. Yes, sir.

Q. What is the deepest you have had that boat with rails out of Conneaut, as to freeboard?

A. Oh, I should think about 6 inches.

Q. Before I forget it, captain, what is the practice in boats of that type as to the trim, or loading them by the head and stern, leaving below?

A. Well we would always keep her 2 feet by the stern.

Q. You carried your fuel toward the after end of the boat, didn't you?

A. Yes, sir.

Q. How much does your boat raise in the burning out of her fuel from Conneaut to Duluth?

A. Probably she would raise about 8 inches.

273 Q. Are you familiar with the Noble?

A. Why I have seen the Noble.

Q. And have been close to her?

A. Well I have been aboard of her, but not when she was loaded.

Q. What would you say about her, that she would raise as fast, faster or slower than your boat?

A. Well, I have heard some of these gentlemen here say the bunkers on her were aft of the smokestack and she would raise faster than we would because ours has the bunkers forward of the smokestack.

The Court: It is agreed where these bunkers are on the Noble?

Mr. Laws: They are forward of the smokestack or abreast of it.

The plans show they are abreast of the smokestack.

Mr. Masten: They are aft of the smokestack, or over, as the testimony is.

Q. You have already said if the coal bunker is abaft of the smokestack she would raise faster than your boat?

A. Yes, sir.

Q. Now, if it is forward of the smokestack and in that proximity she would raise equally as fast as your boat anyway?

A. Yes, sir.

Q. Taking that type of boat, loaded with steel rails, and with 6 inches of freeboard, what you say about whether or not she was seaworthy for a trip to Duluth in the spring of the year?

A. The Spalding?

Q. No, the Noble?

A. Well I think she would be all right.

Q. With your boat, the Spalding, you have been in her 13 years, you have been through some storms with her?

A. Yes, sir.

Q. Were you in her in the storm of 1905?

A. Yes, sir.

Q. Did you happen to be out in the gale?

A. In the whole of it.

Q. The whole of it?

A. Yes, sir.

Q. Where were you, what lake were you on?

A. Lake Superior.

Q. That was where the gale was the worst?

A. Yes, sir.

Q. What were you loaded with?

A. Hard coal.

Q. Do you remember what freeboard you had on that trip?

A. Well, I don't know just exactly because it is pretty hard to put her down with coal.

Q. When you were out in that storm there there were
274 times I take it when your rails were full of water?

A. Full of water all the time.

Q. As full of water as she could get?

A. Yes, sir.

Q. And loaded down with the cargo, and with her rails filled with water you would probably have no freeboard at all at that particular time, with her rails filled?

A. Most likely she would a little, but I don't think she would have very much, with the amount of ice that was on her, and water.

Q. Did the ice freeze on her too?

A. You could not see any steam boat. It was all ice.

Q. That would be added weight to your cargo?

A. Yes, sir.

Q. What part of Lake Superior did you go through?

A. We went from Whitefish, from the Soo, to Ashley.

Q. Were you out in this storm of 1914—first were you in that other big storm of the fall of 1913 when so many boats were lost?

A. Yes, sir.

Q. Where were you in that storm?

A. On Lake Erie.

Q. Do you remember what you were loaded with at that time?

A. Steel rails.

Q. You were upbound with steel rails?

A. Yes, sir.

Q. Where had you loaded?

A. We loaded at Lackawanna, Buffalo.

Q. Loading at the Lackawanna dock, coaling from Buffalo, do you remember what your freeboard was leaving there?

A. Well I don't just remember what she was, no.

Q. What were you usually leaving there?

A. We would generally load her down to 16-6, 14-6 forward.

Q. That would give you about what freeboard in the lowest place?

A. I should think about 6 inches.

Q. Those were the two biggest storms we have ever had on the lakes, were they not?

A. Yes, sir.

Mr. Laws: No cross examination.

By the Court:

Q. How long did you sail the Spalding?

A. Four years.

Q. How long had she been out when you took her?

A. Three years, that is, as mate.

Q. You were on her first as mate?

A. I was on her as mate and master.

Q. During the four years?

A. During the 13 years.

275 Q. You were on her 13 years all told?

A. Yes, sir.

Q. Did you increase her load during those 13 years? Did you get to carry a heavier load?

A. No, we generally loaded her as near as we could every trip to her marks.

Q. Did you load any different in one season of the year that you were on her than another?

A. Well, no, not particularly. We generally took whatever they had for us. Sometimes we would have a light load, and sometimes we would be down to her marks.

Q. And your limit was 16-6 aft and 15-6 forward?

A. Yes, sir.

Q. That was the way you loaded when you first went on her?

A. That is the way we always loaded.

Q. Had the captain been on her before you went on her?

A. Yes, sir.

Q. He had been sailing on her before?

A. Yes, sir.

Q. Had he been in her since she came out?

A. He built her.

Q. He built her and brought her out and after she had been out about three years you went with him as mate?

A. Yes, sir.

Q. And later you became master?

A. Yes, sir.

Q. Now it was the 1905 storm that you were on Lake Superior with coal, as I understand?

A. Yes, sir.

Q. How deep do you think you were loaded then?

A. Well I think we were about 15 feet aft that trip. You can't get her down with fuel. You can't get her down with anything only steel, that is, to load her.

Q. How much forward?

A. I think she was 14-3.

Q. Now by that storm, was that a comfortable load or not, a favorable load, with the 16 feet aft and 14-6 forward?

A. I would not think there would be any difference.

Q. You would not think it would make any difference?

A. No.

Q. If you were to leave below, the marks you have indicated, what would your opinion be as to safety?

A. Well I think she would be all right.

Q. Well, safe or just as safe or not so safe?

A. Just as safe.

Q. To what extent would you carry that answer?

A. Well I have been down to 16-6 and we have been out in some pretty big storms, where you could not see the steamboat at all; you could not tell whether she was a steamboat or whether she was
276 an iceberg, and carrying her full of water, and on decks, so much that we did not go aft from Sunday morning to Wednesday night to get anything to eat.

Q. What I want to know, if you could tell me, is where you would say would become dangerous to load her, to what point. By the way, how much freeboard would she have when she was 16-6 feet aft and 14-6 forward?

A. About 6 inches.

Q. How deep would you say she would have to be loaded before she would not be so safe as she is at 6 inches freeboard?

A. I could not tell how deep you would have to load her.

Q. What is your best opinion?

A. I think when she was down to 16-6, why, she was down to her marks, and she was all right then.

Q. The question is, if you went below that and took her in any deeper than that, whether you think it would be safe or not?

A. Yes, I think it would.

Q. Now how far can we put her down and you still think she would be safe?

A. Well, I don't know. We have loaded her 16-6 and carried her full of water besides. Now I could not just tell how much lower you could put her, and without sinking her.

Q. Don't you have any opinion as to where she would get to be a dangerous load?

A. No, I would not want to answer that question.

Q. Wouldn't she ever get to a dangerous point?

A. Oh, surely, you could sink her.

Q. Where would you think it would be dangerous to load that boat, starting for Lake Superior the first trip that season. I want your best judgment. Don't be bothered with my questions. I would not ask you if I did not want your opinion about it. You must have some opinion as to where you think it would not be so safe to load the boat, and that is what I want.

A. Well, I suppose if you load that boat down so that your water is pretty near up to her hatch coamings, and go out, and if you got on any more water after that, she would not probably be safe.

Q. How much water on top of her hatches would you say?

A. I could not say.

Q. Would you say she would be just as safe as she was at 6 inches, until you did have hatches over her hatch covers?

A. I have seen her lots of times when the water over her hatch

overs was running; I have seen her lots of times with the water running right over her rail.

77 Q. I am talking about her load; how deep can we load her, starting for Duluth the first trip in the spring of the year, with safety?

A. Well, 16-6.

Q. Can you load her any deeper than that and be safe? Answer what yes or no.

A. I would not like to answer that.

Q. You don't know.

A. I would not want to.

Q. Tell me why you don't know or give me your opinion, yes or no?

A. No.

ALEXANDER CRAIGIE, after being duly sworn on behalf of the respondent, testified as follows:

Examined.

By Mr. Leckie:

Q. You are master of lake vessels?

A. Yes, sir.

Q. Were you ever in single decked type of boats on the Great Lakes here?

A. Yes, sir.

Q. About how long have you been in that type of boat?

A. Three years.

Q. During that time did you ever carry steel rails?

A. I have carried two loads.

Q. Did you ever carry iron ore?

A. Yes, sir.

Q. What line or what type of boats were you in?

A. The Great Lakes and St. Lawrence boats.

Q. They are single decked boats?

A. Yes, sir.

Q. Have you ever been out with any of those boats that you sailed when you had the water running over your deck?

A. Yes, sir.

Q. Have you ever been out in any heavy storm with her?

A. Yes, sir.

Q. Were you ever out in any of these particular storms that lake men talk about?

A. Yes, sir.

Q. Which one?

A. The 1905 storm.

Q. What was your experience in that storm, with that type of boat?

A. We didn't have any trouble.

Q. What lake were you on?

A. Lake Superior.

Q. Where were you going?

A. To Fort William.

Q. You were upbound then?

A. Yes, sir.

Q. That was in the fall of the year?

A. Yes, sir.

Q. Did your boat ice up?

A. Yes, sir.

Q. Have you any means of letting us know anything about her freeboard as she was iced up that way?

A. Well we arrived in Fort William, and she was decks to.

Q. That would be without any freeboard at all?

A. Yes, sir.

278 Q. Which boat was that?

A. The John Crear.

Q. So that with her you went through that gale or at least part of the time, with her decks to?

A. Through it all.

Q. In your judgment and experience as a navigator on the lakes, captain,—or first, you have seen the Noble, haven't you?

A. Yes, sir.

Q. And the Spalding and that type of boat?

A. Yes, sir.

Q. Now in your experience gained in these single decked boats, what would you say would be a safe freeboard for a trip to Duluth in the spring of the year, laden with rails?

A. Why I think about 4 to 6 inches would be perfectly safe.

Q. I think that is all.

Mr. Laws: No questions.

By the Court:

Q. Now I want to get at what you mean by being safe. You think it would be dangerous if you went below that?

A. With reference to the Noble?

Q. Well did you mean your answer to apply to the Noble?

A. Yes, sir.

Q. Were you familiar with her so that you would be able to apply it to the Noble?

A. Yes, sir.

Q. Well, what am I to understand by their answer, if you went beyond that, do you think it would be dangerous, or don't you mean that?

A. Of course the further you go beyond that the more dangerous it would become.

Q. The more dangerous it would become?

A. Yes, sir.

Q. Am I to understand that if you went back the other way, beyond that, it would be safer, but that you don't think there would be any chances? I don't want to embarrass you by any of these

questions or I don't want to embarrass any of the witnesses by these questions, but I want to find out about these storms and about the safe loads. Now as you go down the other way, say leaving her at 8 inches, do you think she would be more safe there or do you mean for me to understand she would not be any safer than at 4 inches?

A. That would depend upon circumstances, the deeper she would be aft, on account of the propeller being deeper.

Q. Are you familiar enough with her so that you can give me your opinion as to what her draft ought to be aft and what her draft
279 ought to be forward?

A. I would not want to say that. I know now what her molded depth is, because I have heard it, but I don't want to pass any personal opinion on it.

Q. You don't think you are competent as to that, is that what you mean?

A. I would be competent if I were upon the vessel as master.

Q. Well this master had never been in her before so if you can I wish you would give me your opinion.

A. Well what is your question again?

Q. How do you think she ought to be loaded, first we will put it the safest, if you can answer that, having in mind that, and I will later ask you how you would load her in a practical way, but first, have you got any opinion as to how to load her so as to have her just as safe as you could make her; how would you have her loaded? Would you rather have her not light in a bad storm?

A. I would not say light.

Q. Neither would you want her clear down under water. Now of course there are certain figures given and there is a long distance between those two. What I want to know—

A. I could not strike that medium. I would not attempt it.

Q. Will you tell me how you would load her, in a season of the year when you are likely to get storms on the lakes?

A. As I say, 4 to 6 inches freeboard. I would have to figure on probably about 17-9 forward and 18-3 aft—no, that would not be right—it ought to be may be 17-6.

Q. You think that would leave her 6 inches freeboard?

A. I think it would. I am not positively sure though.

Q. Then I will come back to the question from the other way. Do you think if she had a foot freeboard in a heavy sea, heavy wind, that she would be any safer with a foot freeboard than she would with 6 inches freeboard?

A. Well, I don't think the difference would be noticeable.

Q. Now as you go the other way.

A. Of course you are going to extremes now.

Q. Suppose she was down decks to, what would you say about that?

A. If she had good hatches I would consider her still seaworthy.

Q. How do you think she would stand up with 6 inches of freeboard?

A. Well, I don't think there would be much difference because she would be flooded anyway.

Q. Isn't there a good deal of difference about her discharging water, as to whether she is down in the water or whether she is up above?

A. She would have more chance to discharge it.

Q. And so far as shipping the waves, she will ship those anyway, if there is a bad sea?

A. Yes, sir.

Q. There is no question about that?

A. No.

Q. So the difference is not as to whether she would ship them, but it is entirely in discharging them?

A. There is not very much difference in 6 inches, in discharging.

Q. How about 6 more?

A. The more you add the more you will have.

Q. What would you say about 6 inches minus?

A. Of course that is going a little the other way.

Q. Put her 6 inches minus freeboard. What would you say about her?

A. I am not an expert. I do not care to pass an opinion about that. I don't know just where the medium is.

Q. As I understand it, that is what you are here to help me do, to find out where is a safe line and danger.

A. I would not give you the danger line, but I will give you what I consider the safe line. I do not know the danger line.

Q. Now in this Superior storm in 1905, as I understand, you did not have any trouble?

A. No, sir.

Q. How much freeboard did you have?

A. I didn't have any arriving at Port William.

Q. How much did you have starting?

A. I have forgotten. That is 1905, and it is quite a while ago. I have not kept any record of it so I have forgotten.

Q. What do you think?

A. I won't say. Possibly 3 or 4 inches.

Q. And what boat is that?

A. The Creaor.

Q. And was that usual?

A. Those boats are built for the St. Lawrence trade, with 14 foot draft, 18 foot molded depth.

Mr. Leckie: He said two inches before.

A. You didn't ask me that before.

By the Court (continuing):

Q. I understood you to say you didn't know.

A. No, I don't remember the draft.

Q. Can you give me about what your draft was loaded with rails?

A. They were rails but I can't recollect, not on the rails. I recollect other cargoes.

Q. Can you recollect what the draft was with any load of rails in that boat?

281 A. I only had two rail loads, but I can't remember. We have had her loaded with iron ore with decks to, and there would be water on the deck, but she would have the depth of the gunwale, and that is freeboard if you want to take that.

Q. Do you think that was the safest way to load that boat?

A. I considered it safe.

Q. Do you consider that the safest way?

A. I don't know whether it is the safest or not. I thought it was safe in my judgment.

Q. Do you think she would have been safer in a big storm if she had not been so far down in the water?

A. I don't know. I don't think there would be any particular difference or any visible difference.

Q. That is all.

Cross-examination.

By Mr. Laws:

Q. Captain, what freeboard did you have on that trip to Fort William in 1905 when you started?

A. I don't know I said.

Q. About?

A. I don't know.

Q. You don't know the freeboard?

A. I can't recollect.

Q. Your boat has not got any bulwarks at all on?

A. No, sir.

Q. Her deck is flush and there is nothing to hold the water in there but a little rail, just practically a life line, isn't there?

A. She has a fence around there.

Q. And the water is not held in there by any bulwarks at all?

A. No, sir.

Q. That is all.

Redirect examination.

By Mr. Leckie:

Q. You do not want to leave the impression here that because there is something about 14 and 18 feet there—have you any idea you had 4 feet freeboard when you started on that trip with that load of rails?

A. I know we didn't.

Q. Will you give us your judgment based upon the way you usually loaded her as to what that would be?

A. We possibly had 8 inches freeboard; that is an approximate guess.

Q. Speaking of this particular gale. When they refer to the ice forming. Your fence is stanchions and wire cables along either side?

A. Yes, sir.

282 Q. And that is where the ice would form?

A. Yes, sir.

Q. And when that was frozen solid, you were in the same shape as though you had solid bulwarks?

A. Yes, sir—worse.

By the Court:

Q. Captain, if you think you had 8 inches freeboard when you started, and you loaded ice until you were decks to when you got up to Lake Superior, what would have happened if you started, as you say you sometimes did, decks to?

A. Of course we would have had that greater weight.

Q. Do you think you could have lived through it?

A. Yes, sir, with that boat.

Q. That would have put you how much under water, minus freeboard, do you think?

A. Of course it would be 8 inches.

Q. And do you think you could stand a big storm with 8 inches minus?

A. I believe I could with those boats. I have that much confidence in those boats that I believe it.

By Mr. Laws:

Q. You had on your boat hatches 27 inches high, did you?

A. I have just forgotten the height.

Q. They were quite high?

A. Quite high, yes.

Q. They were much higher than ordinary?

A. Yes, sir.

Q. They were over 2 feet?

A. I would not say they are over 2 feet.

Q. Would you say about 2 feet?

A. I made the remark I thought they were about 18 inches; they might be more, I would not swear to that.

Q. And they were sealed water tight; they were water tight hatches when you had them sealed?

A. Certainly. They were considered so.

Q. You had no bulwarks but just a sort of hand rail with a wire rope to prevent the men from falling overboard?

A. Yes, sir.

By Mr. Leeki:

Q. Captain, all hatches are supposed to be water tight, aren't they?

A. I think so.

Q. And the hatches on the Noble,—have you heard them described here?

A. Yes, sir.

Q. 15 foot hatch coamings with an angle on the top, and the hatch set into the hatch coaming?

A. Yes, sir.

283 Q. You would regard that as a good staunch hatch?

A. I certainly would. That is the same as we have.

Q. As a matter of fact, it is contemplated in these boats, and these boats are built and the hatches are built with the expectation there will be seas on the decks?

A. Yes, sir.

Q. And that is the purpose of building the hatches that way?

A. Yes, sir.

Q. And after you get them down within a few inches of the water, if you are in a sea way, the decks are practically flooded with water all the time anyway?

A. They certainly are.

Q. And a few inches more or less at that time would not make any material difference?

A. Not in my judgment.

Q. That is all.

HUGH MCKENZIE, after being duly sworn by the court on behalf of the respondent, testified as follows:

Examined.

By Mr. Leckie:

Q. What boat are you master of?

A. The Charles Beattie.

Q. Sometimes called the Battie. She is of the style of single deck that has been talked of so much here?

A. Yes, sir.

Q. Isn't she, Captain?

A. I think she has been talked about a good deal.

Q. How long have you been master of her?

A. Since 1906.

Q. Have you carried steel rails?

A. Yes, sir.

Q. Much or little?

A. We have carried them up to the last two seasons. Since then we haven't carried any. We did not carry any at all last year.

Q. Previous to that time you carried them extensively?

A. About nine loads a season.

Q. Also carried iron ore?

A. Yes, sir.

Q. About what was your customary freeboard on that boat loaded with steel rails?

A. Oh, about from 5 to 6 inches.

Q. Did you ever load at Conneaut?

A. Yes, sir.

Q. And you have left Conneaut with that freeboard?

A. Yes, sir.

284 Q. What is the customary way of loading those boats as to trim; I mean forward and aft?

A. About two, two to two and a half feet by the stern.

Q. And with full fueling on those short boats, as you burn it up, do they light up pretty fast aft?

A. Fairly so, yes.

Q. Were you acquainted with the Noble?

A. I have seen her, yes.

Q. How much would your boat light up running from Conneaut to Duluth?

A. About 9 inches.

Q. And from what you had seen and known of the Noble would she light up as fast as your boat?

A. I would imagine she would, yes.

Q. And if her bunkers were further back than the bunkers in your boat, she would probably light up faster?

A. A little. I would imagine she would light a little.

Q. Take that type of boat loaded with steel rails, with 5 or 6 inches of freeboard, would you regard her seaworthy for a voyage to Duluth in the month of April?

A. Yes, barring accident.

Q. And how long did you say you had been in the Beattie?

A. Since 1905 or 1906 rather.

Q. And you have passed through some storms with her?

A. Why, some, yes, yes.

Q. And have you been through storms with her loaded with 5 or 6 inches freeboard?

A. We are loaded to that draft all of the time with steel.

Q. That is all.

Cross-examination.

By Mr. Laws:

Q. You say she would lighten up 9 inches. You mean aft?

A. Yes, sir.

Q. That would put her bow down?

A. Down about half of what she would come up.

Q. And she would lighten up how much mean?

A. How?

Q. How much would that reduce her amidships?

A. She would probably come up 3 inches.

Q. That is all I want.

By Mr. Leckie:

Q. Just one more question or two. Captain, you gentlemen on the single deck boats, you watch one another regarding this matter of loading, and you know how one another's boats are loaded?

A. Somewhat, yes.

285 Q. State to the court whether or not it has always been a fact that these single deck boats have been loaded in that manner?

A. About all I have seen of them have, yes.

Q. And that has been practically the history of lake navigation?

A. Yes, sir.

Q. That is all.

By the Court:

Q. Have you seen the Noble loaded?

A. Yes, sir.

Q. Did you notice how close down to the water she was loaded?

A. I have seen her with iron ore and she would be about the way we was, 5 or 6 inches probably. I would not pay particular attention to that, but I would imagine she would be about as we was on the same trip.

Q. About how much coal, in net tons, do you figure would be burned from Conneaut to the Soo?

A. Well, that would depend, sir, on how long we would be going.

Q. You have given me an estimate as to how much she would lighten aft, how much less water she would draw aft. I think you said about 9 inches. Now I want to get at an estimate of the coal. Take that trip for instance. How much coal in net tons?

A. Oh, probably 60 tons.

Q. 60 tons?

A. Yes. Maybe not that much.

Q. You think then she would come out of the water, with 60 tons, about 3 inches?

A. Yes, a little more than that, at the Soo.

Q. Well, how much do you think?

A. She would probably come out 4.

Q. 4 inches?

A. 4 or 5.

Q. That is, taking her entire bottom, the whole length?

A. No, aft.

Q. How?

A. Aft. She would raise that aft.

Q. I understood you to say she would raise aft 9 inches?

A. To Duluth.

Mr. Leckie: That was to Duluth.

Q. I will ask you to estimate the coal to Duluth?

A. We would burn about 60 tons.

Q. To Duluth?

A. Yes.

Q. How much do you think to the Soo?

A. Oh, probably 40, 35 to 40.

Q. Well now how much would she come out of the water between Conneaut and the Soo, amidships, we will say?

A. I would imagine a couple of inches.

286 Q. You think there would be——

A. About 2 inches or more; maybe 3.

Q. With 30 or 40 tons?

A. Why, yes.

Q. We will take the middle one. Do you think 35 tons, lightering 35 tons, it would let her raise 2 inches over her whole length?

A. 35 tons out of the cargo?

Q. Yes, would raise her the whole length, a mean raise of 2 inches?

A. No, not bodily; no, sir.

Q. That is what I understood you?

A. No.

Q. I want to get at this?

A. As I understood your question, sir, it was how much she would raise—

Q. I am not trying to confuse you at all but I want to know about these things.

A. All right, sir.

Q. Now to go back. Do I understand you to say you had burned 35 or 40 tons between Conneaut and the Soo?

A. Yes, sir.

Q. And you thought she would come out of the water aft how much?

A. Aft about maybe $3\frac{1}{2}$.

Q. And what would happen forward to her? She would go down?

A. She would go down half of that.

Q. She would go down about $13\frac{3}{4}$ inches?

A. Forward, yes.

Q. And to get what would happen to the total length of her, we should add the two together and divide by 2.

A. I suppose.

Q. No, subtract them and divide by 2.

Mr. Logan: No, your Honor, add and divide by 2.

The Court: Is that right?

Mr. Laws: Yes, your Honor.

Mr. Leekie: That would give you the mean.

Mr. Laws: That would give you the mean.

Mr. Leekie: And that would not always be the same on every boat.

The Court: No. I was just trying to see what would happen.

Mr. Leekie: It would be approximately that.

The Court: You would not add those. You have got to subtract them. You have to subtract those?

287 Mr. Herriman: Would you not add them together and divide them?

The Court: No, you have to subtract them and divide by 2, to tell how much that boat went up the whole length of her.

Mr. Herriman: I don't get that.

Mr. Canfield: I say you would have to add and divide by 2. You are seeking the mean.

The Court: Not where one is *minus* and the other *plus*. Suppose you lightered her in such a way that the bow of the boat went up some and the stern went up some. Then you would add them and divide by 2, wouldn't you? Isn't that right?

Mr. Herriman: Yes, your Honor.

The Court: And if one goes down it is minus, and the other comes up. When you take the minus and the plus you subtract, don't you?

Mr. Herriman: You have got me.

The Court: We will subtract them. That would amount to a total lightening of the ship her entire length of $\frac{7}{8}$ of an inch, by taking out 30 or 40 tons coal. Would you think that would be about right, Captain?

A. She ought to go down half what she comes up.

Q. What storms have you been out in, loaded with steel, Captain?

A. Why, I have been in several of them. I do not know as they are ail on record. I don't know as they were worth while speaking of, but big seas.

Q. Were you out in this 1914 storm?

A. No, not in April, no, sir.

Q. 50 mile gales?

A. Yes, sir.

Q. What 50 mile gales have you been out in on the lakes?

A. I was out in 1912, and it was in October. They said it was a 50 mile gale, and I thought it was 70.

Q. How?

A. I thought it was 70; they said it was about 50.

Q. What other storm have you been out in?

A. I can't recall them.

Q. Do you get them every year?

A. Occasionally, yes, pretty nearly every year. They
288 have them every year. We happened to be lucky enough to get out of them.

Q. Any certain season of the year?

A. From along the 15th or 20 of September up until December you can look for a breeze of wind most any time.

Q. And other season?

A. Why in the spring of the year you get a breeze occasionally.

Q. Have you ever been out in any storms in the spring of the year?

A. Yes, sir.

Q. 50 mile wind?

A. Yes, sir.

Q. What years?

A. I was towing rafts of logs with tugs on Lake Superior.

Q. More than once?

A. Yes, twice.

Q. How many?

A. Twice.

Q. Twice?

A. Yes.

Q. When was that?

A. That must be along 15 or 14 years ago.

Q. You said you thought the boat would be safe barring accident. What did you mean by that?

A. A case of a breakdown of the engine or the steering gear;

they invariably go up on the sea, and there is not very much chance with the engine broke.

Q. Would it make very much difference how she was loaded, if those accidents that you refer to, occurred?

A. Not unless she was lit up 2 or 3 feet. I do not believe 4 or 5 inches would make very much difference in the case of that kind.

Q. Where would you say would be the point where she would get so it would help?

A. That would be a question. About that I could not tell you.

Q. What is your opinion?

A. Well, sir, never having been in a predicament of that kind, I don't know. We have lots of water go over her, but I would imagine that it is generally known that the lighter the vessel is, the more buoyancy she has got left, but we never had any trouble with our boat.

Q. Do you want me to understand that the more buoyancy would hold her in the event if her rudder chain happened to part and she got in the trough of the sea?

A. I would imagine.

Q. Do you think she would be safer if she did not have so heavy a load. Is that what you want me to understand?

A. That I could not say as to whether she would be safer or not. When it comes to rolling and tumbling around it is hard to tell what point to have them at to make them safe. The elements are something I have not got figured out yet, just what to do with them.

289 Q. How long have they been building boats without any bulwarks and using them here on the lakes?

A. 7 or 8 years I guess, something like that.

By Mr. Leekie: I want a few more questions, Captain. The Beattie and the Spaulding are both smaller boats than the Noble?

A. Yes, sir.

Q. Then the matter of their raising aft and going down forward, they do not all act in that respect?

A. I do not think they do.

Q. They will go down forward slower the fuller they are?

A. The fuller they are forward, yes.

Q. In the matter of going down forward, as I asked you, it depends somewhat on how full she is. As you remember the Noble, was she pretty full forward?

A. I think she was. As I remember she was pretty full forward.

Q. Now the matter of having 3 or 4 inches freeboard, that is at the lowest place?

A. The lowest place, yes.

Q. Your boat and a boat like this, the Noble, the boats of this type which we have been talking about, they have a pretty sharp shear?

A. Yes.

Q. And 2 or 3 inches freeboard at the lowest place, that would still leave them with 6 or 8 feet or something like that forward?

A. About that I would imagine, yes.

Q. And going down forward, that would not materially affect her freeboard at that part of the ship at all?

A. No, sir.

Q. In reference to this condition of safeness with this freeboard. Your experience has taught you, or you have loaded these boats this way, and you have from your experience found that safe?

A. Yes, sir.

Q. Now as to where the point would get to be dangerous, you have never experimented or loaded them down to the point where you found it was dangerous and they would sink, did you?

A. No, sir.

Q. So you have experimented up to the point of safety, but you have not gone to the point to determine where they are dangerous?

A. No, sir; at least never saw them.

Q. Your boat has solid bulwarks?

A. Yes, sir.

Q. With water gates, and the Spalding the same?

A. Yes, sir.

Q. That is all.

Then adjourned until 10:00 o'clock next day.

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Friday, February 19th, 1915, 10:00 a. m.

Same parties met pursuant to adjournment.

JOHN A. FRANCOMBE, after being duly sworn by the court on behalf of the respondent, testified as follows:

Examined.

By Mr. George L. Canfield:

Q. Mr. Francombe, you reside in Detroit?

A. Yes, sir.

Q. How old are you?

A. 69; going on 69.

Q. And how long have you lived in Detroit?

A. Since I was six months old.

Q. In what business have you been engaged?

A. Marine engineer; machinist.

Q. Have you been interested in vessels as an owner or otherwise?

A. Yes, sir.

Q. In the steamer Stafford?

A. Yes, sir.

Q. You were interested in the Thomas W. Christy?

A. Yes, sir.

Q. And in the Benjamin Noble?

A. Yes, sir, and the B. W. Neff.

Q. The steamer Benjamin Noble was owned by the Capital Transportation Company, I believe?

A. Yes, sir.

Q. Do you recall when she was built?

A. 1909.

Q. Whom did the company employ to manage that ship?

A. Employed me.

Q. At a salary?

A. Yes, sir.

Q. As manager what had you to do with chartering the ship?

A. Well I was to look out for the loads and deal with the brokers.

Q. Whether or not loads were obtained from ship brokers?

A. Yes, sir.

Q. Who were some of them?

A. Mitchell kind of handled her in Cleveland; Boland in Buffalo.

Q. And who at Duluth?

A. Kelland, and sometimes we got Davidson——

Mr. Masten; Tomlinson?

A. Yes, sir.

Q. Who decided on the employment of the ship?

A. The employment.

291 Q. Of her business; where she was to go?

A. What do you mean? Who hired the captain?

Q. No, who decided what cargo she should take?

A. It was me.

Q. And who employed the masters?

A. I did.

Q. And you employed the engineer?

A. Yes, sir.

Q. You did?

A. Yes, sir.

Q. And who employed the rest of the crew?

A. The captain and the engineer.

Q. That is in accordance with the usual practice on the lakes?

A. So far as I know.

Q. Who attended to the collection of her freight?

A. Why sometimes on coal freight the captain would collect it, and on steel—iron ore or pig iron or rails, why they would send a check to the office maybe 30 days afterwards; I think it was 30 days.

Q. What did you have to do with the collection of the money?

A. I didn't have anything to do with the collection of the money.

Q. Who paid the bills of the ship?

A. The captain paid——

Q. What office did you mean when you referred to the office?

A. The Capital Transportation Company's office; Mr. Dietz.

Q. Mr. Dietz, the secretary?

A. Yes, sir.

Q. And that office was where?

A. Down at the corner of Chene and Franklin.

Q. In Detroit?

A. Yes, sir.

Q. Who attended to the payment of the vessel's accounts?

A. The captain paid all the little running expenses except the main fuel bills.

Q. And where were the bills paid from?

- A. The main fuel bill?
- Q. All other accounts paid?
- A. The captain paid that.
- Q. Outside of those—who paid the other accounts?
- A. They were paid at the office.
- Q. The same office to which you referred?
- A. Yes, sir.
- Q. Now who attended to the navigation of the ship?
- A. The captain.
- Q. Who attended to her loading?
- A. The captain.
- Q. And how was the cargo usually unloaded?
- A. Her cargoes—they used our hoists, and their men unloaded
- m.
- Q. The consignees?
- A. The consignees, yes.
- Q. Where did the steamer Noble spend the winter of 1913 and '14, her last winter?
- A. Spent it in Cleveland.
- Q. What did you have to do with chartering for her last load?
- A. Was it the last load of grain?
- Q. No, the last load of rails that she carried?
- A. What did I do with it?
- Q. What did you have to do with the charter?
- A. Mr. Mitchell obtained the charter.
- Q. The Mitchell Company of Cleveland?
- A. Yes, sir.
- Q. What was the first you heard of it?
- A. I think it was around the fore part of March that he called me by telephone and he had some rails in view.

The Court: That is Al Mitchell?

- A. Yes, sir, Al Mitchell. He wanted to know whether I would e them and said yes. I told him I had been figuring with and but we had not closed the thing.
- Q. This was over the telephone?
- A. That was over the telephone.
- Q. Did you subsequently receive a telegram from Mitchell & npany regarding the matter, showing you telegram which I ask have marked.

Telegram marked Exhibit 25.

Mr. Laws: No objection. Shall I read it?

The Court: Yes.

- Q. Was that the telegram which you received being Exhibit 25?
- A. Yes, sir.

Mr. Laws: The telegram reads as follows:

"Cleveland, March 10, 1914.

John A. Francombe, c/o Capital Brass Company, cor. Franklin and Chene Streets, Detroit:

This confirms the Noble. 3000 tons, rails. First trip, Conneaut, Duluth—80.

MITCHELL COMPANY."

Letter marked Exhibit 26.

Q. Subsequently did you receive the letter which has been marked Exhibit 26? dated March 10, 1914?

A. Yes, sir.

Mr. Canfield: That is offered in evidence together with the telegram Exhibit 25.

293 Mr. Laws: No objection.

The Court: It will be received.

Mr. Laws (reading):

Cleveland, Ohio, March 10, 1914.

"Mitchell Company, lake transportation, Rockefeller Bldg.:

Mr. John A. Francombe, c/o Capital Brass Company, corner Franklin and Chene Street, Detroit. Dear John: We were unable to wire yesterday in reply to your message about Ben Noble, but at 10:30 this morning telegraphed you as follows: 'This confirms Noble, 3000 ton rails, Conneaut to Duluth, first trip 80.'

These rails will be shipped by M. A. Hanna Company. In talking with them this morning they say they want to make the shipment the first trip this spring, and will endeavor to have them forwarded in due time.

Yours truly,

ALFRED MITCHELL."

Q. The message, Captain Francombe, they refer to, was what? your message?

A. I don't know what that could have been.

Q. Was that your telephone message to them saying the charter was all right?

A. It must have been.

Q. Now when were you next in Cleveland after that?

A. I went over to Cleveland on April 9th; I think it was Thursday morning.

Q. The boat was there?

A. She was there, yes.

Q. Do you recall calling on John Truby?

A. No, sir. I went up to Mitchell's office first, and I looked down and I see the Noble was not over to the grain elevator.

Q. Never mind about that, Captain, but while you were there in Cleveland did you call on John Truby?

A. Yes, sir.

Q. And who is he?

A. Why he is the assistant traffic manager for the Pittsburg Steamship Company.

Q. And what was your impression then as to who was to be the shippers of these rails?

Mr. Laws: That is objected to. We are not concerned with his impression. We object to it.

Mr. Canfield: This is the explanation why he wanted to make it.

The Court: The objection is overruled.

Exception for claimant.

Q. What did you think he had to do with the rails

294 A. I thought he had the shipping of them, coming in on the Conneaut dock.

Q. And you called on him regarding the shipment?

A. Yes, sir.

Q. Did he tell you—what did he tell you he had to do with them?

A. All he told me he had to do with them was he loaded them; they were coming over his docks.

Q. Who did he say represented the shipper?

A. Let's see, Hanna—McMorris.

Q. What did he say to you about Mr. McMorris?

A. He said if you will sit down a few minutes, John, he said—he asked me whether I was acquainted with them. I said, no, I have never done any business with Hanna Company. Now he said if you will sit down a few minutes I will take you over and introduce you to Mr. McMorris; they are going to have some rails going up this summer, and he said I would like to see you get them. I said, all right, and I set down.

Q. You waited until Mr. Truby could get away?

A. Yes, sir.

Q. Where did you go together then?

A. We went over to Hanna & Company's office.

Q. In the Leader Building?

A. Yes, sir.

Q. Did you meet Mr. McMorris?

A. Yes, sir.

Q. What was said between you?

A. Why we—John—Truby said to him I was the manager of the Noble. He said here is a man that has got a boat and it is something funny, he said, we have 100 or so many boats, he said, and we ain't got a boat in the crowd that will carry our structural iron. He said this boat has been carrying all of our structural iron, and we had to give them two dollars and a half a ton.

Q. Coming down to your interview and taking up the matter of the shipment of the rails.

A. Yes, sir, I asked him about the rails, whether he had them all in and he said yes, there were 3,000 tons in.

Q. What did you say to him?

A. I told him we had a new captain in this boat and I didn't know how many tons he would take? Now I said, he may take 3,000 tons and he may only take 2800, but I said it is all up to the captain. Why, he said, we chartered her for 3,000 tons through Mitchell & Company. I said that does not make any difference. I said we are carrying the insurance on that boat, and we dassent interfere with our captain. I said I never done it yet. I said I don't

295 know how much the captain will take when he gets down there. He asked me how much I thought he would take. I told him I could not tell him, but I said whatever he leaves there I will pick them up the next trip; I will have the captain come around and pick them up the next trip.

Q. What did Mr. McMorris say to that?

A. He said that was all right, if I would surely do it.

Q. What did you say regarding the next trip?

A. I told him I would pick them up the next trip, I would have the boat come around there, I expected she would come to Oswego, and she would go over there and fuel up.

Q. What did you expect her to take up the next trip?

A. Hard coal from Oswego.

Q. And what did you say about the coal filling the hold probably? Do you remember saying anything about that?

A. I told him she only drew about 13 foot 3 with coal.

Q. And that would be how many tons of coal?

A. About 2400 tons.

Q. On account of coming from Oswego?

A. Yes, sir, she would not have much fuel in her you know.

Q. And where did you say the balance of the rails would be carried?

A. Carry them on the deck.

Q. What did Mr. McMorris say to that?

A. Mr. McMorris said that was all right. Now he said I want you, the third trip I want to load her again. He said I wish you would find out how much this captain wants. I said all right, I will find out when he gets up to Detroit with his cargo.

Q. That was with respect to further shipments which were coming?

A. Yes, sir, that was trip No. 3.

Q. Then after you got through with the call on Mr. McMorris, what did you do?

A. I came away and I did not see Mr. McMorris. Mr. McMorris told me to let him know as soon as I seen the captain.

Q. I mean at the interview in his office. You left there. Where did you go?

A. Yes, I went with Mr. Truby and left there.

Q. Who was the captain of the Noble at that time?

A. Captain Eisenhardt.

Q. What was his first name, if you recall?

A. I think it was John.

Q. Had you had correspondence with John Eisenhardt previous to his becoming the master of the Noble?

A. Yes, sir.

Q. I will show you a letter which I ask to have marked Exhibit 27.

296 Letter marked Exhibit 27.

"Chicago, Illinois, December 17, 1912.

"Mr. J. A. Francombe, Detroit, Michigan.

"DEAR SIR: In case you are in need of a master for any of your steamers during the next season, I beg to make application with you for position. I am a young man 31 years of age, strictly temperate. I have a license covering everything as far as Montreal. I have been mate of the steamer Alfred Mitchell, the William Nottingham, the Yale and the Adam Cornelius, and the Bassett, the Williams and the A. D. Davidson. Last summer I traded to Montreal all season.

"I can furnish unquestionable references from the different men I have been with and I can refer you to the managers. I do not ask for a high salary, and I would run the boat with as little expense as possible, at the same time keeping the boat up as you want her kept. If I fail to make a favorable showing from the very start, I would not expect you to keep me, or I would not expect any salary for the time I had put in.

"I am in this business to make good and get ahead and I would work hard to please you. Should you desire a personal interview with me I would be glad to come to Detroit and see you.

"Hoping you will give my letter favorable consideration and reply, I am,

"Yours truly,

"JOHN EISENHARDT,
"450 Milwaukee West."

Q. Do you remember receiving that letter?

A. Yes, sir.

Q. Have you any copy of your reply or do you recall what you replied?

A. No, sir; I don't believe I have.

Q. Did any employment result from that application?

A. No, sir.

Q. Why?

A. Because the same man was going to stay in her.

Q. For that season?

A. Yes, sir.

Q. That was the season of 1912?

A. 1912? Let's see, yes, that is the season Captain Grant went in her.

Q. 1912?

A. Yes, sir.

Q. And who was in her in 1913?

A. Captain Grant.

Q. Now I show you a letter which I ask to have marked Exhibit 28.

Letter marked Exhibit 28.

"Rochester, Michigan, January 4th, 1914.

"John A. Francombe, 649 East Congress St., Detroit, Mich.

297 "DEAR SIR: In case you make any change in masters of your steamer Noble I beg to make application with your company for position. I am a young man 32 years of age, strictly temperate. I have a license covering everything as far as Montreal. I have also had canal experience. Have been mate on one of the D. Sullivan Company's boats for the last two years and can refer you to them or the captain. Can also refer you to other companies I have worked for if you desire."

Mr. Laws: There is no other page here. It is missing.

Mr. Canfield: We could not find the other page the other day. It is probably mixed with some other papers in here but we will supply it.

By Mr. Canfield (continuing):

Q. Do you recall receiving the letter of January 4th, 1914, being Exhibit 28?

A. Yes, sir.

Q. About when did you see Mr. Eisenhardt personally?

A. I think it was some time the fore part of January, before the Lake Carriers' meeting.

Q. Did he show you any recommendations?

A. Yes, sir.

Q. I will show you these papers which I ask to have marked Exhibits 29 and 30.

Papers above referred to marked Exhibits 29 and 30.

By Mr. Canfield (continuing):

Q. And I ask you whether those are the recommendations which he handed you?

A. Yes, sir.

Q. Whether or not you are acquainted with Captain Sullivan whose name appears on one of those?

A. Captain Sullivan?

Q. Yes.

A. Yes, sir, I have known him for 30 years.

Q. And who is he?

A. He is a vessel broker and manager and one of the ablest men we have on the lakes in the vessel business.

Q. If you know, how are recommendations of masters by him, regarded?

A. Supposed to be good.

Q. You had personal interviews with Mr. Eisenhardt?

A. Did I?

Q. Yes.

A. Yes.

Q. Whether or not it was finally arranged he should have the Noble for 1914?

A. Well after I seen Capt. Sullivan.

298 Q. You saw Capt. Sullivan personally?

A. Yes, sir.

Q. And finally engaged Capt. Eisenhardt?

A. Yes, sir, I took him down to our office, the office of the Capital Transportation Company, and introduced him to Mr. Noble and Mr. Dietz.

Q. They were the president and secretary of the company?

A. Yes, sir.

Q. They talked with him?

A. They talked with him.

Q. What did you finally tell the captain?

A. Why I told him I thought his chances was good and I would let him know in a few days. I told him to go home and rest contented. I thought everything was all right about it.

Q. When did you finally let him know?

A. Oh, I guess it was a week or ten days afterwards.

Q. What did you tell him?

A. I told him he could have the Noble to sail that season.

Q. And at that time had the matter of salary been arranged?

A. No, sir.

Q. When, with respect to your trip to Cleveland, was that settled. Was that settled about what amount you would pay him?

A. That was at Mitchell's office in Cleveland regarding the salary.

Q. After the interview with Mr. McMorris?

A. Yes, sir.

Q. What did you do regarding getting the captain up there?

A. I asked Capt. Mitchell whether he would send and get the captain up there.

Q. And did he do so?

A. He said he would get him up in about half an hour.

Q. You then told the captain what his salary would be?

A. No. He came up there, and I told him about the rails first. I said "Captain, there is 3,000 tons of rails down there; when you get down there you put on what you think your boat will carry, and when you get that on, I said, don't take any notice of what Capt. Mitchell or the dock men say to you; you are the master of that boat." Now I said I don't know whether she has had 3010 or 3015. The log book is there in the safe. I gave him the combination of the safe, to get the log book out so he could look for himself, and what water she was drawing. He said all right.

Q. What was said about salary?

A. Now, I said, Captain, I will pay you \$1500. Now I said, if you keep this boat out of trouble and lay her up in good
299 shape I will give you a bonus, because I said I think I have work to keep her going.

Q. What sort of an appearing man was Captain Eisenhardt?

A. He was about as slick a man as I have seen; a clean cut man.

Q. What did his age seem to be?

A. Just about what he says there, about—I should take him for about 30 or 35 years of age.

Q. After this interview at Mitchell Company's office he left to go to the boat I suppose?

A. No. We went over to the inspectors'. He said I would like to have you to go over to the inspectors' with me. He said it looks as though we are going to get stuck here. I said we won't get stuck, Captain. I said however I will go over with you. So I went over and seen Captain—what is that inspector's name?

Mr. Masten: Do you mean Captain Gould?

A. Yes. Captain Gould.

By Mr. Canfield (continuing):

Q. By the way, where was Capt. Eisenhardt staying at this time, whether he was on the Noble or not?

A. Where he was staying?

Q. Yes.

A. Where do you mean?

Q. What was he doing in Cleveland?

A. Why he was fitting the boat out.

Q. Fitting out the boat?

A. Yes, sir.

Q. And the engineer was with him?

A. The engineer was with him.

Q. Whether or not you had the crew?

A. The crew was coming up the next day I believe.

Q. You went around to the inspector's office and saw Capt. Gould?

A. Yes, sir.

Q. And what arrangement was made regarding inspection?

A. Why, he told me he was going to do the best he could for us. I said Mr. Meno or Capt. Meno of the inspectors told me if you would inspect the hull they would do the rest of it over here. I said it won't take you very long to go down and look her hull over, and when we get to Detroit to finish her. He said where is your letters to that effect. I said I ain't got one. I said can't you take my word for it, and he said well he didn't know. I said now that is what Capt. Meno told me over there, that if you would take and inspect the hull, because he said we don't want the boat loaded when we inspect her; we want her hold clear, do you see.

Q. Whether or not the inspectors at Cleveland were pretty
300 busy?

A. They were busy, yes. We were not going to get out

of there before the 18th of May I think it was the time was, before her turn come.

Q. Was it arranged for this partial inspection at Cleveland?

A. Why, yes. He told me afterwards, he said when he was going to do it—I said to him we will have to run the blockade then. I said this boat ain't going to stay here until the 15th of May. Well, he said I will try to do the best I can for you; now that is all that I can do, Mr. Francombe. So I said all right.

Q. Well after that arrangement was made what did you do, and what did the captain do?

A. Why, he told the captain to go up there and keep him posted about the boat when she would be unloaded and ready for him.

Q. She had been loaded with corn through the winter?

A. Yes, sir, with corn. They were taking 20,000 bushels out of her one day, and putting the hatches on.

Q. After the arrangement with the inspectors was made what did you do?

A. I went up there I think—I went over to Mitchell's office again.

Q. Where did the captain go?

A. The captain went down to his boat.

Q. Was the engineer with him?

A. Yes.

Q. Who was that engineer?

A. His name is Alex Codger.

Q. How long had he been on the boat?

A. He has been in the family 26 years.

Q. And how long had he been on the Noble?

A. He went on the second season she came out.

Q. And was he on there continuously since?

A. No, sir; he was on the Goodyear.

Q. Where was he in 1913?

A. 1913 he was on the Noble.

Q. And 1912?

A. 1912, he was on the Noble.

Q. And in 1911?

A. He was on the Noble; he went in the second season she came out.

Q. And stayed on there right along?

A. Yes, sir.

Q. And you returned to Detroit as I understand?

A. Yes, sir.

Q. You had been down on the Noble while you were in Cleveland I suppose?

A. Yes, sir.

Q. Looking after the discharge of the cargo?

A. Yes, sir.

Q. And returned to Detroit?

A. Yes, sir.

301 Q. Where had the captain been instructed to go for the rails?

A. Conneaut.

Q. Do you recall whether or not the captain was to telephone Mitchell & Company in regard to the rate of loading—was there any arrangement of that kind made?

A. To the rate of loading?

Q. Whether the captain was to call up Mitchell & Company and let him know how the loading was going on?

A. Not as I know of.

Q. You do not know anything regarding that?

A. No, sir.

Q. What was the next you heard from the Captain?

A. The next I heard was on Saturday when I came home at noon. My wife said there was a telephone message. I said who from? She said I don't know. So I called up the Western Union and they didn't have any so I called up—this was about 1 o'clock I called up the Postal—

Q. It was a wire a telegram instead of a telephone? you were getting?

A. Yes sir; they did not send the boy. That is the way they were in the habit of doing.

Q. What was the message they gave you?

A. I could not tell.

Q. And what was the message they gave you?

A. I could not tell—the message was he was crowding the captain to put on 3,000 tons.

Q. Did you afterwards receive a copy of the message from—

A. Yes, I got one the other day. I believe Mr. Dietz hunted it up down at the Postal, but I could not get it.

Q. Will you look at that and see if that corresponds with your recollection of that message?

A. Yes, sir.

Telegram above referred to was then marked Exhibit 31.

Conneaut April 17, 1914.

John Francombe, 649 East Congress St., Detroit, Mich.:

Will be loaded Saturday noon. Mitchell wants 3000 tons to go if possible. Please advise.

EISENHART."

Q. Did you telephone the company—did you telegraph the company to reply to that?

A. Yes, sir.

Q. And what was the message that you directed over the telephone?

Mr. Laws: We object to that. You should get the message. I think we ought to have the message.

302 Mr. Canfield: It was telephoned under our practice; the telegraph companies receive and transmit many telegrams over the telephone.

Mr. Laws: Get the Western Union copy.

Mr. Canfield: That will follow of course.

Mr. Laws: Have you got it?

Mr. Canfield: Yes. I just wanted to keep it in chronological order. What was the reply that you telephoned to the telegraph company to that message as you recollect it?

Mr. Hill: I think you had better produce that?

The Court: I think it is all right. You may have the benefit of an exception but I will let him take the order right along.

A. I think I replied "Three thousand tons too much. Take all you possibly can."

Q. The other day did we try to look up a copy of that message in the telegraph office?

A. Yes, sir. That is the message I was telling you about.

Q. And is that a copy of that, Captain? (Showing telegram to witness.)

A. Yes, sir.

Telegram above referred to then marked Exhibit 32. (32.)

"April 17, 1914.

To Captain Eisenhardt, Conneaut, Ohio:

Think three thousand tons too much. Best take all you possibly can.

JOHN A. FRANCOMBE."

"Charge Capital Brass Works, Capital Transportation Company."

There is a word above there.

Mr. Cranfield: We will have to get some of the telegraph men to interpret that.

The Court: Is that your own or is that what the girl wrote out?

A. That is what Dietz addressed them the other day.

The Court: What that means is this answers yours of the same day. That is what that means.

Mr. Laws: Probably.

303 The Court: It is not your writing?

A. No, sir.

The Court: Somebody in the office—that is a minute they put on there to help them telephone the message at the other end.

Mr. Masten: There is no address given. They send them back the same way.

The Court: That is what that means in there; that is the answer to the telegram.

Mr. Canfield: It is for information.

By Mr. Canfield (continuing):

Q. Were there any telephone conversations to you from the captain while the loading went on?

A. No, sir.

Q. By the way, Captain Francombe, in addition to the recommendations of Captain Eisenhart, did you talk to Captain Sullivan personally?

A. Yes, sir.

Q. Whereabouts?

A. In the Ponchartrain Hotel.

Q. About at what time?

A. At the time they were having their Lake Carriers' meeting there.

Q. In 1914?

A. Yes, sir.

Q. Do you recall that the steamer was to stop at Detroit after loading?

A. Yes, sir.

Q. When did she reach here?

A. She reached here on Sunday.

Q. Reached here on Sunday?

A. Just a little after noon.

Q. Had you been advised as to when she left Conneaut?

A. Yes, sir.

Q. So you expected her?

A. Yes, sir.

Q. What was the purpose of her stopping here, do you recall?

A. To be tested——

Q. Or inspected?

A. Inspected.

Q. Finish her inspection. Where did she lie while she was here?

A. She laid down at the foot, there by Orleans Street, at the shipyards.

Q. Near the foot of Riopelle Street, was it not?

A. At the foot of Riopelle Street; yes.

Q. Did you see the captain after they arrived?

A. Yes.

Q. What took place between you?

A. I met the captain at the tug office the captain and the engineer.

304 Q. Captain Eisenhardt?

A. Yes, sir; with the young man who came over to adjust the compass.

Q. Morrison?

A. Morrison.

Q. What did the captain have to say?

A. He said he left a car of rails over there, and was talking, and he said he had quite a breeze coming over, and he said the boat behaved first rate. He said she is a better sea boat than those St. Lawrence River boats, and he was kind of sorry he hadn't put on the other car of rails.

Q. What did you say?

A. Why, I told him, I said, Captain, don't let that bother you. I said we want to get this here steering gear changed, that they recommended, and get her out of here.

Q. Now, Captain, something has been said here in the testimony about water gates on the Noble. How many water gates were there originally on that boat?

A. What do you mean, when she came out?

Q. Yes.

A. There were four on a side.

Q. When were the additional water gates put in there?

A. I think it was about the fourth trip that was made, when she came out.

Q. How many were put in there?

A. I ordered two on a side extra.

Q. Were they put in?

A. Yes.

Q. By whom?

A. The Detroit Shipbuilding Company, the people who built the boat.

Q. When she came out there were four on a side and you put in two more?

A. That made six.

Q. Making six?

A. Yes sir, and she had—well we took away the chocks—the big timber heads in front, she had mooring line chocks with a door on to them, which is pretty nearly as big as a scupper.

Q. What arrangement was there for keeping open these scuppers? these water gates?

A. When she was going along?

Q. Yes?

A. Why she had one of those big long hinges with a kind of—I don't know what you call it——

Q. A bolt?

A. Yes, a bolt which went through the long part; that is, it was locked inside, and the short part was down. When it was open they usually turned it around and left the long part down because that would always stay that way.

Q. And held it open?

A. That held it open, yes. And we had some chains to go on there to put around and tie up around the bulwarks.

Q. How did those new gates compare in size with the older ones?

A. They were a little longer; a little bigger.

305 Q. Now they hung on hinges at the top?

A. Yes, sir.

Q. And there was a bolt at the bottom so that when the gates were closed the bolt dropped into a little socket to hold it there?

A. Yes, sir.

Q. Turning that would project that bolt out?

A. And keep it there, shut.

Q. So that the gate would swing on its hinges?

A. Yes, sir.

Q. And in addition to that there were chains provided by which the hatches could be—by which the hatches could be——

A. Shoved right up against——

Q. The bulwarks?

A. The bulwarks.

Q. With chains?

A. Just the same as that (indicating) like that goes up there. They would put a chain through there and it would come around here (indicating).

Q. Captain can you illustrate that again. Just illustrate to the court with that.

A. Say this is the side of the ship. Here is the gate. The gate is shut now (indicating).

The Court: Give me the dimension of the gates now.

A. I think the gate is 3 foot by 12.

The Court: Inches?

A. Yes.

Mr. Canfield: The original gate?

A. Yes. The others are a little bigger. Those are about 15 inches. Of course I could not say exactly.

Mr. Hill: The plan will show.

The Court: All right, go ahead.

A. The gate is something like this (showing). We put this up like that (showing). And shove the chain through there and over the bulwarks, holding it there, and tying it down.

The Court: Chain the gates right up around the rail, the bulwark?

A. Yes. Suppose this is the top of the rail. Suppose that is the top of the rail and the gate is right down there (showing). It comes right up here (showing).

The Court: This is the top of the gate and this is the top of the rail?

306 A. Somewheres near there, so it holds it in.

The Court: As I remember the gate was 9 inches up?

Mr. Laws: That is right, your Honor.

The Court: How high was the top of the rail or the bulwark?

Mr. Hill: Three foot 6.

The Court: I was wondering whether that was low enough so it came to the top or whether it would be sticking up above, is what I was trying to get at.

A. No. I don't think, your Honor, it comes right up, I think it comes in here, but you see the chain holds it, and there is no way for it to get down again, after you put the chain in.

The Court: I can see how it would work that way, but I figured that it came above the top of it, then it would be an awkward arrangement, but I now understand.

By Mr. Canfield (continuing):

Q. Do you recall asking Captain Eisenhardt about those chains while he was here in Detroit?

A. I asked him if he found them. I told him the chains was forward. He said, yes, he seen them. He said I will get them out going up the river and get them in shape. He said I am looking over things as fast as I can and in a couple of days he said, I will have everything all straightened up.

Q. What was said regarding the hatch cloths, if you recall?

A. I asked him whether he found the hatch cloths all right. I said she has got new hatch cloths, top ones. I asked him whether there was anything he wanted. He said he thought he wanted some new wedges.

Q. What for?

A. For the batons, for the hatches.

Q. Were those provided?

A. Yes, I went and got him 500 or 400.

Q. How about the hatches on the boat, will you tell the court?

A. The hatches was to stand as much as the main deck; that is, she was built for carrying pulp wood.

Q. And pulp wood calls for what kind of a deck cargo?

A. We had 17 feet, in her.

The Court: Above deck?

A. Above deck, yes.

By Mr. Canfield (continuing):

Q. Were any changes made in those hatches after the boat came out?

A. Yes, sir.

307 Q. What was that?

A. We made them two—three feet wider, two of them.

Q. Do you recall the height of the coamings?

A. The coamings I think was 12 inches; the drawings will show that.

Q. Were there any other changes that you recall made in the ship after she came out that the additional water gates and the widening of some of the hatches?

A. No, I don't know as there was.

Q. How about the strong-backs under the big hatches?

A. I got some new ones made, some pieces 8 x 8. She had these big T irons going across. That is what she had, 8 x 8, but we had to take some out of that to get the crown of her deck, making it about 6 in full, in the middle. There was two of them, one on each side, so as to go right on these strong backs, so they made a solid hatch of it.

Q. You were on the boat, Captain, while she was here in Detroit?

A. Yes, sir.

Q. Several times?

A. Yes, sir.

Q. Did you see the United States inspectors there?

A. Yes, sir.

Q. She was finally inspected?

A. Yes, sir.

Q. What was done in regard to their recommendations as to steering gear?

A. It was all done to their satisfaction.

Q. And by whom was that work done?

A. Where was it done?

Q. By what company?

A. The Detroit Shipbuilding Company, the men who made the rig.

Q. Where she was lying for that purpose?

A. Yes, sir.

Q. As you were there, Captain, did you have occasion to observe the draft of the vessel?

A. Just forward.

Q. And what was her draft forward?

A. Her draft was about 16-8 I should judge. The 17 foot was out of water.

Q. Was she loaded by the bow or stern?

A. She was down by the stern.

Q. How much?

A. I should judge she was somewhere around 14 or 15 inches.

Q. How much side did she have out?

A. Forward of the boilers she had 8 or 10 inches, as near as I can judge.

Q. When did she get away from here?

A. She got away Thursday morning, I think.

308 Q. Had you been on board of her Wednesday afternoon?

A. Yes.

Q. Had the hatches been open while they were here?

A. The forward hatch and the after hatch was open.

Q. She was going to take the rails to Duluth or Superior?

A. Superior, yes. Sometimes we are consigned to Duluth.

Q. What sort of condition was she in for that trip?

A. I thought she was in good shape; better shape than most boats I have been riding on for 40 years.

Q. When did you expect her to arrive in Duluth?

A. Well, of that I didn't form any idea, because she had some ice to go through, considerable ice in the lake. I suppose he got through as soon as he could.

Q. But you could not anticipate the day of her arrival?

A. No, sir. I went to Algonac after she left here.

Q. By the way, have you a summer home there?

A. Yes, sir.

Q. About what was the speed of the Noble?

A. She was built to make 10 miles loaded and 12 miles light.

Q. And did she live up to those expectations?

A. Yes, sir.

Q. About what quantity of fuel would she burn, say between Conneaut and Duluth?

A. Oh, they usually put on her about 150 tons.

Q. About how much of that would be left when they reached Duluth?

A. Well they used to put on—They would put on about 25 to 45 tons to come down on again. Sometimes she has put on 60. It is according to the work on the rails you know. Sometimes they get—it takes a good deal of fuel, hoisting them rails.

Q. In loading?

A. In loading, yes. It is pretty hard to get at the fuel consumption.

Q. You said they put on about 150 tons going up, and then you spoke of 50 or 60 tons?

A. That is to come down with; generally put on from 40 to 60 tons to come back with.

Q. You would put that coal on where?

A. At Duluth.

Q. So the 150 or thereabouts is what was calculated to take the steamer to Duluth?

A. She would take about 210 tons to make the trip.

Q. The round trip?

A. Yes, sir.

309 The Court: Did she use up the 150 going up or did she have considerable left?

A. No. She would have some left.

By Mr. Canfield (continuing):

Q. About how much?

A. Well 210—it is pretty hard to tell. Maybe she would have, oh 25 tons in the bunkers. It is according to the weather she would have.

Q. So the average, for an ordinary trip; the consumption Conneaut to Duluth, would be about 125 or 130 tons?

A. No, sir, she used more than that.

Q. She would use more than that?

A. Yes, sir, use about 150 tons.

Q. Use about 150 tons?

A. Yes, sir.

Q. I do not quite understand. You would put on, say 150 tons at Conneaut?

A. Yes, sir.

Q. Going up, and then 50 or 60 tons?

A. Generally put on 50 or 60 tons at Duluth to come back with.

Q. That would be 210 for the round trip?

A. Yes, sir.

Q. And which leg of that trip would the greater part of it be used?

A. Which leg of it?

Q. Yes?

A. On going up.

Q. I think is all.

A. It takes three days to unload them rails, and the steam

engines, the rotaries use up considerable steam hoisting. It just blows right through them.

The Court: After you reach there?

A. Yes. She has four engines on there, hoisting engines.

Cross-examination.

By Mr. Laws:

Q. How long a trip is it from Conneaut to Detroit?

A. Well, I never figured that.

Q. About how many hours I mean?

A. Conneaut. How far do you call it?

Q. I don't know.

A. She would make ten miles.

Q. She makes about ten miles an hour?

A. Yes, sir.

Q. About how many hours is it, do you know? How long a trip is it?

A. No, I don't know. I never kept a log there. Conneaut is a place I was only in about twice in all my sailing.

Q. What is her coal consumption per hour when she is under full speed loaded?

A. I guess she would go about 1600, somewheres around there.

Q. No. I mean to say how much coal would she burn an hour when she was full loaded?

A. That is what I am telling you.

Q. 1600 what?

A. Pounds.

Q. Oh, pounds. What experience have you had as a captain on the lakes here?

A. Oh, not very much. I have been going up and down here about 45 years.

Q. About 45 years?

A. Tugging and one thing and another.

Q. Sailed any steamers?

A. Why, yes, I came out in steamers; I came out in the barge called the Mary Pringle. There were just about three barges running when I came out that I know of.

Q. Do you hold a master's license?

A. No; an engineer's.

Mr. Canfield: I do not think the captain understood the first question. He has always been an engineer.

Mr. Laws: You called him "captain."

Mr. Canfield: That is a sort of a courtesy title.

Mr. Laws: Most engineers resent that.

By Mr. Laws (continuing):

Q. You have been on the Great Lakes as a marine engineer for about how many years?

A. Well, I started in '67.

Q. How many years did you sail as a marine engineer?

A. Well, I quit in 1909 I believe.

Q. What 9?

A. 1909 when the Noble came out.

Q. From 1867 to 1909?

A. Yes, sir.

Q. So you had approximately 42 years' experience as a sailor man on the Great Lakes?

A. As an engineer.

Q. As an engineer?

A. Yes, sir.

Q. In one ship or another of one kind or another, is that right?

A. Well, I have only worked for three people since I started to work.

Q. How many boats altogether were you in in all of that time?

A. Well I brought out the Mary Pringle—

Q. Never mind the names; just give us the number, unless you want to give the names. I have no objection to it.

A. About four boats.

Q. How long have you been a manager of boats?

A. 27 years.

Q. How many?

A. About 27 years.

Q. On the Great Lakes?

A. Yes, sir.

311 Q. You built the Noble—your company built the Noble?

A. Our company built the Noble.

Q. That is, the Capital Transportation Company. For canal work, you intended to use her for canal work?

A. Built her mostly for pulp wood.

Q. Through what canals would she go, built for pulp wood?

A. She would not go down and to any—except she was to get pulp wood down below, but I never sent her down there.

Q. What canals did you expect her to go through loaded with pulp wood?

A. The Soo canal.

Q. What other canal?

A. That is all.

Q. Was it contemplated she would use the Welland Canal?

A. Well, no. We did not put in a salt water condenser in her, not to put her down below Quebec.

Q. Didn't you intend to use the Welland Canal when you brought her out?

A. Sure, for grain,—she was a kind of a tramp boat.

Q. She was a kind of tramp boat, and expected to go through the Welland Canal?

A. Yes, sir.

Q. And use the canal?

A. Yes, sir, any place where there was any money in it.

Q. And she was built as a canal, wasn't she?

A. Yes, sir. Full canal size.

Q. She was built canal size?

A. Yes, sir.

Q. How many tons of coal did you put on in Detroit while she was lying here being fixed? How many tons of coal were put on her?

A. How many tons of coal?

Q. Yes. At Detroit?

A. On the trip going up, this fatal trip?

Q. Yes.

A. Didn't put on any.

Q. You did not put on any?

A. No, sir.

Q. How many tons did she have on when she left Cleveland to go to Conneaut?

A. I could not tell you.

Q. Have you got the bills?

A. No, sir.

Q. Where are the bills?

A. The bills——

Q. For the coal?

A. I have not got them.

Q. Do you know what coal she had when she left Cleveland to go to Conneaut to take these rails?

A. She didn't have any. We didn't put on any fuel in Cleveland.

Q. She had some. How did she get to Conneaut?

A. She got over with coal.

Q. Under her own steam?

A. Yes, sir. The coal she had in her that winter.

312 Q. How much did she have?

A. I could not tell you that.

Q. Could not tell?

A. No, sir.

Q. How much coal did you pay for as having been put on at Conneaut on this trip in April, the beginning of April, 1914?

A. Mr. Dietz was looking that up. I think she put on 150 tons, so he said.

Q. Didn't she put on 159 tons?

A. I don't know.

Mr. Canfield: I have the bill.

Bill produced and marked Exhibit 33.

Q. Look at the bill and see if that is not the bill for the coal that was put on the steamer Noble at Conneaut in April, 1914, just before she started on this voyage in question?

A. 159 tons. That is about it.

Mr. Canfield: Let me say on the record that Mr. Francombe was served with a subpoena *duces tecum* by the other side to produce all corporate records, bills and things like that. He has not charge of any of those, but I have brought them all into court, and will produce anything else that is asked for, but he personally never comes in contact with the bills. This bill is dated April 16.

By Mr. Laws (continuing): It is fair to assume, Captain Francombe, is it not, when she got to Conneaut, before she put on any of this 159 tons, she still had some coal on board?

A. She might have had some coal, 3 or 4 tons—maybe 20. I didn't get down into the bunker to look at the coal.

Q. What stores does she carry? How much in weight would her stores be, say Conneaut to Superior?

A. I generally put on from 150 to 160 tons. That is what her bunkers will hold.

Q. I mean stores; not coal. I mean stores for the ship. Ship stores—provisions?

A. How much does she put on?

Mr. Canfield: Grub.

A. Grub?

Q. Yes.

A. I don't know anything about what she puts on for grub. It is according to what kind of deck hands we have. Maybe we will get some of those lean fellows and they will eat more than the others.

Q. You put on about 10 tons of stores on the boat when you started her out?

A. 10 tons?

Q. How much do you put on?

A. We get the stores every trip.

313 Q. Would it amount to anything in tons?

A. No, sir, I guess not.

Q. I just wanted to get the facts.

A. This boat is only out about four days.

Q. I just wanted to get the facts. Now you had an interview with the captain at Detroit while she was on the voyage from Conneaut to Superior. You met him in the boat?

A. I met him at the tug office first.

Q. You went down to the boat with him, did you?

A. Yes, sir.

Q. How long had she been laying at Detroit, how many days?

A. She was there until Thursday morning.

Q. From when?

A. About 7 o'clock I think.

Q. When did she get into Detroit?

A. Somewheres around Sunday noon; just after dinner.

Q. Just after dinner?

A. Yes.

Q. And that would be——

A. I ate my lunch at home and I came down to the tug office, and they were in there then.

Q. She was in the dock at Detroit on Sunday the 19th by about noon?

A. It was after noon.

Q. What time would you say?

A. I should judge maybe 2 or 3 o'clock.

Q. Maybe 2 or 3 o'clock.

A. Somewheres in there. I did not pay any particular attention.

Q. Now you had a talk with the captain on the boat. Tell his Honor exactly what you said to him, everything that you said to him and everything he said to you.

A. Why, that is all we said. He said he left a car of rails over there and he was sorry that he didn't put them on. He said he would have put them on if it hadn't been for the inspection, because the engineer told him he would have to leave the water out of his two boilers in the hold; it might make it look deep. Her boilers are down below decks, below the water surface. In order not to get up steam again they let the water go in the hold. She had two 12 foot or 11½ shell boilers. Both boilers were let off in the hold that I know of.

Q. After the ship was loaded did they put the water on again?

A. After the ship was loaded?

Q. Yes.

A. After the ship gets up steam she pumps that out, overboard.

Q. Tell us everything else that you said to the captain and what he said to you?

A. He looked at her draft and he said I didn't put her down, figuring the water would be more than the rails, the 50 tons of rails.

314 I said I don't know, captain, I ain't no figurer. I said don't let that bother you. I told him get this here steering gear rig fixed as they recommended, the inspectors, and get out of there.

Q. And about what time did she get out, what time?

A. I think 7 o'clock on the morning of Thursday.

Q. Thursday, that would be on the morning of the 23rd of April. This boat, I understood you to say, was built to carry pulp wood?

A. Yes, sir.

Q. And that contemplated she would have a deck load?

A. Yes, sir, decks to be heavy and bulkheads to be heavy.

Q. How high was it contemplated above decks the wood pulp would go?

A. Oh, that is according to how long this wood lies in the water.

Q. How much, in the way of tons, was it contemplated she would have on deck?

A. Two-thirds.

Q. How many tons would that be, do you figure?

A. Say 3,000 tons; she would carry 2,000 tons on deck.

Q. And 1,000 tons below?

A. Yes. I don't know how you would figure it. It is like a boat carrying lumber. On the Stafford, she has 11 feet in the hold. Of course, she only carries 11 feet in there, but she would carry 16 feet deck load.

Q. Now from the time she was there, from Sunday to Thursday, how many times were you on the boat, Captain?

A. Oh, I could not tell; maybe half a dozen times.

Q. Maybe half a dozen times?

A. Yes, sir.

Q. And about how long did you stay there each time you were there?

A. I could not tell you that.

Q. Give us your best idea?

A. Oh, maybe two or three hours.

Q. Why were the additional freeing ports put on, Captain?

A. Captain Sauers told me he did not—he thought she ought to have more gates in; that she did not free herself quite clear.

Q. That she did not free herself quite clear?

A. Yes, sir.

Q. And you put them on?

A. I told him the next trip. I could not do anything this trip, but when he came around the next trip I would have them on, ready for him.

Q. And getting out of Cleveland, Ohio, at the time Captain Eisenhardt took the boat to go from Cleveland to Conneaut, did he have trouble?

A. Yes.

Q. What was it?

315 A. They did not open the bridge. I was standing right there on the steamboat, the passenger boat.

Q. What happened?

A. He backed the boat, the same as anybody would, and her stern went into the City of Erie.

Q. In other words, as he was getting out of Cleveland and before he had gotten out of the harbor at all, he had a collision with her and backed into a boat?

A. Anybody would do that, when they don't open the bridge.

Q. But he did have this collision?

A. I don't know as you would call that a collision.

Q. He had an accident?

A. I went over there and I could not see the paint knocked off the boat. The boat had been laying there all winter, and they wanted us to pay for it; we were going to be the goat.

Q. The fact is, he had not been on the boat as master navigating her an hour before she ran into another boat. Isn't that true.

A. I don't see how you would call that running into her.

Q. The other boat was tied fast?

A. The other boat was along side of the dock, laying right along-side of the dock.

Q. And this Noble ran into her, didn't she?

A. No. She didn't run into her. She backed up into her.

Q. She backed up into her?

A. Yes, sir.

Q. That is what I want to get at.

A. I was not 50 feet away from there, standing on the bow of the Cleveland boat.

Q. The libel was filed by this same boat that she backed into, in all events, for damages which she suffered by this collision?

A. Yes, sir.

Mr. Masten: If that is material, to save further investigation, the libel that was filed was not filed.

The Court: It is not decided?

Mr. Laws: No.

Q. I think that is all, Mr. Francombe.

The Court: Just one question. Did you put the coal into her through the hatch back of the smokestack?

A. Yes, sir.

The Court: Did you put some in the hatch forward?

A. She has no hatch forward.

316 The Court: All of the fuel went——

A. Aft, that one hatch.

Mr. Laws: These bunkers come right up to the head of the boiler, and on top of the boiler, alongside of the boiler.

By Mr. Laws:

Q. That is abreast of the boiler?

A. Yes, sir.

Q. The coal bunkers are abreast of the boilers?

A. Yes. It is one of those chutes.

By the Court:

Q. Who placed the order for this ship?

A. Mr. Noble.

Q. Did you have anything to do with that at any time?

A. He got me to look over the plans.

Q. What I was wondering was whether the order called for a ship of a certain draft when she was loaded or a certain tonnage of cargo or not?

A. I don't believe there was anything said; she was to be a full canal sized boat, with extra heavy docks and bulwarks—or bulkheads, fore and aft. The boat I was in before this for 18 or 20 years had one of those small bulkheads made out of pine, and we got into trouble two or three times through this bulkhead, which was not heavy enough.

By Mr. Laws:

Q. I would like to ask one question. The Welland Canal has a draft of 14 feet, hasn't it?

A. Well, they tell you to load 14, about 14-2. It is according to just the measurements there.

Q. About 14 to 14-2 is the maximum draft in the Welland Canal?

A. At the Soo they telegraph up there. She has gone down there drawing I guess 14-4 with iron ore.

Q. 14-4 would be the maximum you could go through the Welland Canal?

A. That is about as deep, yes.

By Mr. Masten:

Q. By a full length canal size, do you mean the full length that will go through the locks?

A. Yes. She was extraordinary fan tail you know.

Q. And the locks down there are limited in size? You say full canal size. That means a boat which is as long as the canal locks will take through?

A. Yes, sir.

Mr. Laws: And also in depth what the locks will take through, the Welland Canal?

A. Yes, sir.

(Recess to 1:30 P. M. same day.)

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Afternoon Session, 1:30 P. M.

Mr. Masten: I have here the duplicate of the master's certificate, the license of Captain Eisenhardt, which I offer in evidence.

The Court: It may be received and marked Exhibit 34.

Mr. Canfield: Although it is a little out of the order, I desire to offer in evidence in this case parts 4 and 5, volume 15, of the Congressional Record being those parts contained in those volumes which relate to the introduction of legislative proceedings including the enactment of Section 18 of the Acts of Congress, June 26, 1884, entitled an Act to remove certain burdens from the American merchant marine, and so forth.

Mr. Laws: Those are objected to because it has been determined that Congressional records are not evidence. Second, because the Act itself is presumed to embody the final conclusion of the legislature on the subject, and this particular act is a matter for the interpretation of the court, as it stands complete, and has been passed upon many times by the federal courts, as to exactly what it applies to, its breadth and scope and so forth. Therefore, we object to it.

The Court: Is it voluminous or can it be read now?

Mr. Canfield: The portions we can select out of it are not voluminous. For the purposes of the offer, I offer the entire volume, asking the right to extract therefrom those parts which counsel satisfy themselves bear on this enactment.

The Court: They may be received.

Mr. Laws: Exception.

Mr. Canfield: I would say there has been a great deal of debate about this subject with myself and brother Masten, who has been on the opposing side, and he has taken a different view of this particular matter.

The Court: But now you are in accord?

Mr. Canfield: I am glad to say we are in accord. I suppose we can arrange between ourselves to check up those portions.

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Mr. Hill: Yes.

Mr. Canfield: As I mentioned in the examination this morning, Mr. Francombe was subpoenaed to bring in the records of

the company among other things to show all the cargoes she had ever carried. Mr. Francombe has charge of those records and we have brought them here and tender them to the other side; the bills of lading and records showing those cargoes. For the purpose of convenience we have reduced them to compilations, which are at their service for the purpose of checking up.

Mr. Laws: We may or may not need them. There has been a good deal of evidence here which relieves us of the necessity of this. We would like counsel to keep them here and if there is any part we need to use we will call upon them.

Mr. Canfield: Then as part of our case we will offer all these bills of lading and records and the compilations in evidence.

The Court: I will ask you to have the reporter mark such exhibits as you offer.

Mr. Canfield: For convenience I will take these bills of lading—

The Court: Does this exhibit cover all the bills of lading?

Mr. Canfield: Yes, they will cover all the bills of lading.

Mr. Canfield: Shall we use this tabulation?

The Court: You may offer that in connection with the bills of lading, and we will call the tabulation and the bills of lading described in the compilation Exhibit 35.

Mr. Laws: We may object to that when we have an opportunity to look over them.

The Court: Yes, I will receive them and you may renew your objection after you have examined them, and have the same benefit of that objection and exception as if made at this time.

The tabulation is marked Exhibit 35.

Mr. Canfield: That cargo list is made up from the corporate books and records and entitled "Freight Paid" and the book is here
319 for the investigation of counsel if they desire to check up the tabulation.

The Court: How long is the tabulation?

Mr. Canfield: It is not long.

The Court: I shall want to hear it, and you might read that now. This I understand shows the tonnage.

Mr. Canfield: The tonnage paid for by the consignees, the character of the cargo and the amount of the cargoes.

The Court: And the date?

Mr. Canfield: The dates can not be located through this.

Mr. Hill: We have a tabulation which is more complete than Mr. Canfield's, and which is a matter of government record. We have here certified copies of all the cargoes carried by the Noble both upbound and downbound for the five years she has been in commission, showing the date she passed through, the weight of her cargo and the draft and the character of the cargo, and if they desire to put it in they may do so. It is more complete than theirs.

Mr. Canfield: It might be more complete, but as the majority of people know, the bills of lading are seldom if ever signed by the captain.

The Court: Well, the other is in evidence, but we will call this Exhibit 36, or is that offered at this time.

Mr. Hill: If they want it they may offer it.

The Court: Do you want to offer that now?

Mr. Canfield: We are examining it to see how it corresponds.

Mr. Canfield: We will put them both in.

The Court: All right, Exhibit 36 is a certified copy of what?

Mr. Hill: True copies as shown by the records and files of the United States Engineer's office at Sault Ste. Marie canal, Michigan. The record discloses all upbound and downbound trips of the steamer

320 Noble from 1909 to 1914 inclusive, showing the date of her passage bound from what port to what port, the freight aboard in short tons, the description of her cargo, the draft in feet and inches.

Mr. Canfield: I may presume we shall have an opportunity of taking these this evening for the purpose of checking them over?

Mr. Hill: Yes, I think we have a copy which we can hand you.

The Court: What are these drafts? mean drafts?

Mr. Hill: That is the draft taken at the stern.

The Court: Which is the maximum draft?

Mr. Hill: Yes, the maximum draft.

Mr. Laws: There is only one correction to be made in the copy. In 1910, downbound, July 7, where it is $18\frac{1}{2}$ inches, it should be $16\frac{1}{2}$ inches.

Mr. Canfield: I desire further to offer in evidence this bundle of bills of lading, marked Exhibit 37. They are a bunch of bills of lading I took from the larger file as they have noted on them the draft of the vessel and will be used in connection with certain testimony we will offer later on.

Mr. Hill: From witnesses you will swear later you mean?

Mr. Canfield: Yes.

Mr. Hill: We reserve the right to object to that.

EDWARD GASKIN, after being duly sworn on behalf of the respondent, testified as follows:

Examined.

By Mr. Masten:

Q. What is your full name?

A. Edward Gaskin.

Q. Where do you live?

A. Buffalo, N. Y.

Q. What is your business?

A. Marine architect and surveyor.

Q. Mr. Gaskin, without repetition of questions, will you please explain fully all your connection with lake shipping in whatever capacity and different relations?

321 A. I commenced in 1871 in the shipyard; serving my time as shipbuilder, in a drawing office, and model loft experience, promoted to foreman of the shipyard, chief of the draughting room,

assistant superintendent, superintendent, general manager of the shipyard, and in addition assistant manager of the Union Steamship line up to 1901. Since that time I have been engaged as marine architect and surveyor on the coast, and on the lakes, doing a general business.

Q. How much of that time were you on the coast?

A. About three years altogether.

Q. And with that exception your entire experience has been on the lakes?

A. Yes, sir.

Q. You may say then you have been in the business on the lakes from the time of small craft to the modern 600 foot boats?

A. I have seen the evolution of the lake trade from the smaller schooners to the 12000 ton steamer.

Q. Were you acquainted with the Steamer Noble?

A. I was on board the Steamer Noble in 1913, I think in the fall.

Q. Under what circumstances?

A. I had the steamer, either the Steamer William A. Rogers or the Steamer Charles Weston in the drydock at Superior making repairs, and at that time this steamer was in the drydock.

Q. Did you make any examination of her?

A. I did.

Q. What character of examination did you make?

A. I went aboard and underneath and around, and took a general observation of the vessel.

Q. Such as a naval architect and engineer would make when he saw a new piece of that kind?

A. Yes, sir, I was interested in her. She looked to me to be a fine single decked steamer, and I was anxious to see her.

Q. Since that time you have examined the blue prints and drawings of that vessel, have you not, more in detail?

A. Yes, sir.

Q. So that you are able to say now you are acquainted with her both from actual inspection yourself and from an examination of the drawings in this case?

A. Yes, sir.

Q. Now, what character of shear did she have, Captain?

A. Well she had considerable shear for a little boat.

Q. What would you say generally as to her construction?
322 and as to spring, her parts, design and all, taking the thing altogether?

A. Oh, she was a fine steamer.

Q. She was a fine steamer?

A. Yes, sir.

Q. To save time, you have made certain tabulations at our request, have you not?

A. Yes, sir.

Q. On the element of her freeboard and reserve buoyancy, whatever you may call it. Will you just state what calculation you made and explain to the court what it was and how it was made

and the result reached, giving it in detail, so that it may be incorporated into the record?

A. May I look at my memorandum?

Q. I am afraid you will have to. I want the details of the figures so that it may be checked up by the other side, and it may become a permanent part of the record.

A. I was asked to make an approximate estimate of the surplus buoyancy of this steamer above the 18 foot mark; and I estimate there was 423 tons under the main deck forward, above the 18 foot line; aft 141 tons; six hatches, that is the coamings around the hatch, the projections above the deck you know, 70 tons. That portion of the steamer's hull under the spar deck beams, above the 18 foot mark, that would be accounted for by the cant of the beams, 88 tons; under the poop deck, that is that part of the after end of the vessel that is a part of the ordinary construction of the steamer—

Q. That is part of the body of the ship you mean?

A. Yes, sir, a part of the body of the ship. 463 tons, and that part of the forecastle deck, that part of the steamer confined underneath the forecastle deck I only took 50% of that.

Q. Why?

A. On account of the doors and windows. While they were good doors and good windows and all that sort of thing, they might not be considered perfectly water tight. Then, too, of course, there is a hawse pipe, and a walking chock that are more or less openings although they have made provision for making them fairly water tight.

Q. And those provisions are designed for that purpose, for the purpose of making them water tight?

A. Yes, sir, they are designed for the purpose of making them water tight. Then I took 50% of the cubical capacity under the forecastle deck and estimated it at 138 tons. This made a total of 1,323 net tons which I called the surplus buoyancy above the 18 foot line. This steamer's displacement, as I have understood it

here in court, is 4660 net tons at 18 feet; 1323 net tons surplus buoyancy represents better than 28.4% of her displacement?

Q. And that is at 18 feet, her molded depth?

A. Yes, sir.

Q. Did you later eliminate any of that?

A. Yes, sir.

Q. And what part did you eliminate on her?

A. At your request I took out of it all that space under the fore-castle deck. This left a net amount of surplus buoyancy of 1,185 net tons, which is 25% of the steamer's displacement at the 18 foot water line.

Q. What would you say as to that being a reasonable proportion of reserve buoyancy on a ship of her construction?

A. Yes, sir; it is.

Q. Now you have at several places in your answer used the word "estimate." Please explain what you mean by that, the method of

your estimation of those various amounts; what elements did you take into account?

A. As nearly as I could from the drawings submitted to me I estimated the amount of cubic feet contained in these spaces, and turned them into tons.

Q. In other words, you took the figures in your blueprint?

A. Yes, sir.

Q. That you called an estimate?

A. Yes, sir.

Q. And your computation was made as a matter of fact, upon actual figures as actually appeared by those blueprints?

A. Yes, sir; as I found them upon the blueprints. Of course, Mr. Masten, you must understand these figures are not absolutely accurate. It would be necessary to have the lines of the steamer and go into a very elaborate calculation to get them accurate, but I think they are accurate enough for all practical purposes.

Q. Did you also at request take some of the drafts as they actually appeared by the bills of lading which were submitted to you and compute on the displacement scale which is in evidence here the draft of the vessel from that and compare it with the draft of the vessel as it actually appears on the bills of lading?

A. I did.

Q. I wish you would take the bills of lading stating the character of the commodity and the data as you find it there, and it is subject to the comparison of the actual bills of lading which are here—

Mr. Hill: We will compare them later. We will not take the time to do it now.

A. November 11, 1911, 1478 gross tons of coal and an estimate of say 1655 net tons and 720 lbs. The draft was 10 feet 324 forward and 14-2 inches aft, making a mean draft of 12 feet and 1 inch. To this 1655 net tons I added the weight of the vessel, and 100 tons of fuel, estimate- at 1453 tons. This made a total displacement of 3108 net tons, and referring this to the displacement scale which you furnished me, I measure a mean draft of 12 feet 3 inches and three-quarters.

Q. A difference of what?

A. Two inches and three-quarters.

Q. Greater than that which actually would appear from the bills of lading?

A. The displacement scale, 2¾ inches in this particular cargo, greater than the mean draft shown on the bills of lading.

Q. Again I notice you use the word "estimate" in referring to the figures on the bills of lading. Is that an estimate or is it a calculation?

A. Well, it is a calculation certainly.

The Court: Let us see what the government records show for that cargo.

Mr. Hill: She passed the Soo on that trip, November 26 and the draft at the Soo showed 14 feet 3 inches.

The Court: What would your figures show aft?

A. The mean draft was $12\frac{3}{4}$ inches. I can not tell what it would be at each end.

The Court: Considering it in the proportion you have got it there, $14\frac{1}{2}$ after and 10 forward, about what would that be?

A. I can not tell that at all, your Honor. She might be lighter forward or deeper forward. I could not tell.

By Mr. Masten:

Q. Will you take the next one you have, Mr. Gaskin?

A. June 3rd, 1912, 2855 gross tons of ore, which makes 3197 net tons and 1200 lbs. The draft forward was 16 feet 6 and after 17 feet 6; mean draft 17 feet.

Q. The total displacement was 4651 tons, mean draft as referred to the displacement scale, 17 feet 11 inches aft making a difference of $11\frac{1}{2}$ inches.

Mr. Hill: In that bill of lading, where was she bound from and to?

Mr. Masten: Superior, Wisconsin, to South Chicago, Illinois.

The Court: That you would figure deeper than the draft given on the bill of lading would indicate?

A. The displacement scale shows with that amount of cargo on she ought to be drawing $11\frac{1}{2}$ inches more than she was drawing according to the bill of lading.

Mr. Hill: On June 4th shows the cargo from Superior, Wisconsin to South Chicago, of 3136 short tons of iron ore with a draft of 17 feet 3.

Mr. Leckie: Before we pass that, I would like to call the attention of the court to the fact that the draft of water as shown by this report is greater than the draft of water she has shown on the bill of lading, so apparently they put water in her; she was deeper at the Soo when she had burned out the fuel than when she left the lower port.

Mr. Hill: Oh, that is a mere assumption, what they put in her.

Mr. Leckie: Yes, I am simply calling the court's attention to the fact she is deeper at the Soo than when she left the lower port.

By Mr. Masten:

Q. Take the next one, Captain?

A. July 10th, 1912, 2956 gross tons of ore; 3310 net tons, and 1440 lbs. Draft forward 16 feet 10 inches, aft 18 feet; mean draft 17-5. Total displacement 4764 tons. Draft with this, displacement referred to the displacement scale 18 feet 4 inches and a half, making a difference of $11\frac{1}{2}$ inches.

Mr. Hill: What does the bill of lading show on the trip the ports bound to and from?

Mr. Leckie: The bill of lading is dated July 13, 1912, from Ashland to So. Chicago.

Mr. Hill: The report here is she had 3248 short tons of ore aboard with a draft of 17 feet 8. I might call your attention to the fact that the cargo as indicated is reported by the master on each of these occasions runs considerably over the bill of lading amount. That is, the number of tons.

Mr. Laws: A report from the government apparently is less than the bill of lading calls for.

By the Court:

Q. Do you agree with the contention that as she lightered by burning her fuel that she would go down forward half the amount
326 that she comes up at the stern?

A. No.

Q. What about that?

A. I can not tell that, without, as I said a little while ago, on another matter, making calculations. It is a matter of intricate calculation to tell just exactly what that alteration or trim would be, but assuming she was full forward she would not go down in my judgment as much as a half of the amount she would raise aft.

The Court: Omitting that then, if you do not agree with that, do you agree with my figuring that you should subtract the amount she goes down forward from the amount she goes up aft and divide it by 2 in order to get the mean lessening of draft?

A. That is correct, your Honor.

By Mr. Masten:

Q. Now will you take July 27th, 1912?

A. July 27th, 1912, 2961 and 46 lbs. gross tons of ore; 3316 net tons and 640 lbs; draft forward, 16 feet 9 inches; aft, 17 feet 11 inches; mean draft, 17 feet 4 inches. Total displacement with this cargo, 4771 net tons; probable draft from displacement scale, 18 feet 4 $\frac{3}{4}$ inches; a discrepancy of 12 $\frac{3}{4}$ inches.

Mr. Hill: Where was that from and to?

Mr. Leckie: That was from Duluth to Cleveland.

Mr. Masten: That would put the water on her deck, would it not, Captain?

A. Oh, the water would be all over the deck, sure. At least the water would be on her deck, not all over it.

The Court: You mean according to the computation?

A. If the steamer was drawing 18-4 $\frac{3}{4}$ inches, that would make the water on the deck, your Honor.

Q. And the next one, Captain?

A. Sept. 6th, 1912, 2250 net tons and 8 pounds of coal; 13 feet 8 inches forward; 13 feet 10 inches aft; mean draft, 13 feet and 9 inches; total displacement with this cargo, 3703 net tons; probable draft for displacement scale, 14 feet 6 $\frac{3}{4}$ inches; discrepancy, 9 $\frac{3}{4}$ inches.

Mr. Leckie: That was from Oswego to Milwaukee. That was the Welland Canal load.

Q. You may take the next one, Captain.

327 A. September 22nd, 1912. 2233 net tons and 16 lbs. of coal; 13 feet 9 inches forward, 13 feet 8 inches aft, mean draft 13 feet 8½. Total displacement with this load 3686 net tons. Probable draft per displacement scale 14 feet 5¼ inches, a discrepancy of 8¾ inches.

The Court: Was that from the Soo?

Mr. Leekie: No, that was through the Welland Canal.

By Mr. Masten:

Q. The character of the shear of this vessel and the character of the freeboard has been so frequently explained, I do not think it is necessary to go into that with this witness. I think you said, Captain, that the reserve buoyancy even at the 18 foot mark, down to -8 feet, was sufficient in your judgment for a vessel of this type?

A. Yes, sir.

Q. And she would be perfectly seaworthy with that?

A. Yes, sir.

Mr. Masten: I have seen these steamers since I was a boy and I most certainly think so. Since I was a boy I have seen vessels of all kinds going up and down the lakes with their decks awash, sometimes with sails on, sometimes being towed, sometimes with her own steam, and there are very few cases that I remember where any of the vessels have been lost through foundering. Although they were loaded down decks to.

Q. Can you remember any case outside of the Ben Noble?

A. Outside of the Benjamin Noble I do not remember a single case.

Q. I take it by your answer you would say then in fact that she would be seaworthy in that condition?

A. I certainly think so, with the amount of surplus buoyancy she had.

Q. How would you characterize her shear, as a short one or normal or what?

A. Why she has a sharp shear; has 6 feet of shear forward, that is in a half length of the vessel, she has 6 feet shear.

Q. Counting it down from the 18 foot mark?

A. From the 18 foot mark up.

Q. And by that, you would mean that if the water was just awash of the lowest point it would be 6 feet out forward?

A. Yes, sir.

Q. And if you add 6 inches to that; that would increase the buoyancy just so much, would it not?

A. Most decidedly if you added 6 inches of freeboard to her you would have about 140 tons extra buoyancy.

328 Cross-examination.

By Mr. Laws:

Q. Mr. Gaskin, what do you take as the total displacement of the ship?

A. I think Mr. Logan stated it as 4660 tons.

Q. Did you take that as the basis of your calculation?

A. Yes, sir.

Q. You did not figure it out yourself?

A. The displacement scale I think shows it also.

Q. I say did you figure that out yourself?

A. I think that is correct.

Q. You took his figures you say as 4660 tons?

A. Yes, sir.

Q. That is for the displacement of the ship?

A. Yes, sir.

The Court: Without cargo?

A. Yes, sir, and 18 feet draft.

The Court: You did not mean the ship without a cargo?

A. Oh, no.

Mr. Laws: No. I was wrong on that, your Honor. That is all so far as we are concerned.

By the Court:

Q. How do you account for the fact that on this first cargo that you gave us the figures of November 11, 1911, there was only a discrepancy of 2 $\frac{3}{4}$ inches and on all these others there was very much more? That one seems to be out of proportion to the others.

A. That is true.

Q. How do you account for that?

A. Why, I did not seek to account for it. I checked over my figures to see whether I had made a mistake, and I simply let it stand.

Mr. Masten: Your Honor will note it was a very light cargo and that might explain it.

The Court: Still at that, it is way out of proportion, is it not?

The Witness: Yes.

Q. Is there anything in mathematics or mechanics that will explain that?

A. There is no reason I know of.

Q. In your judgment and opinion what draft of water was this ship really designed to draw?

329 A. I think she was intended to load right down to her decks. I think she is fitted for that. She is competent and capable to go on almost all occasions from one end of the lakes to the other at that draft.

Q. At what draft?

A. Loaded down to 18 feet.

Q. That would give her how much freeboard?

A. That would not give her any freeboard at all. She would be practically decks to. At that she would be safe. She has a large buoyancy in my judgment.

The Court: 18 feet mean draft would put her decks to?

A. The water would be just even with the top of the deck outside of the ship.

Q. Without any sea at all, you say she was perfectly safe to go through?

A. Yes, sir.

Q. Now when it comes to a sea, how about that? Can she go through? And it is not the shipping of seas that makes the trouble. She would ship seas anyway if there was any sea. She is going to and is bound to ship sea anyway?

A. Yes, sir. That class of vessels, if there is any sort of wind or sea at all, are pretty wet. They expect to be wet.

Q. What about discharging the water. That is the thing to consider, is it not? That is the thing for me to think about with reference to her being down in the water, is it not?

A. Yes, in my judgment, there is a large amount of surplus buoyancy as much as anybody ever expects in a vessel of her size, and she would be very uneasy; there is no doubt about it. The water would be spilling aboard and spilling off frequently, but she would be perfectly safe.

Q. If you are going to put her down that deep, ought you to have any bulwarks at all on her; if you are going to put her down decks to?

A. I think the open bulwarks would be a better proposition.

Q. Does not that lead you to think she was not intended to go down decks to?

A. No, sir, that does not give me that impression.

Q. Would you ever build a boat where the decks were without any bulwarks?

A. I think I would prefer to have open bulwarks.

Q. But when you get them further out of the water then there is no objection to bulwarks?

A. Well we have not built any vessels, or we have built very few vessels with solid bulwarks except these small boats. All the larger boats have open bulwarks, and have for the last 30 years.
330 But I think a good deal of that has come from a cheapening the construction more than from any other source.

Q. Well, the trouble from not shipping water on account of bulwarks is very much increased as you put her down in the water, is it not?

A. You mean the ship has greater capacity for *receiving* herself?

Q. Yes, I meant discharging the water, not shipping. I meant to say when you get her down where she is in the water, as you go down the difficulty of discharging the water increases, does it not?

A. Yes, sir, but you see a vessel does not get down in the sea and wallow in it; she is down and up, and when she is up the water is running off the decks.

Q. But if you have her decks to she can not wallow a bit without being under the water?

A. Well, she rises on the crest of the waves and she is not in one position very long.

Q. Suppose something happens so that she gets in the trough of the sea, then what?

A. Then she is not so well off.

Q. By being down?

A. No, she does not discharge the water then as rapidly.

Q. Now then from the standpoint of safety where would you say was the safety place, with a boat of this kind, where would you say would be the point of greatest safety for the heavier sea?

A. Why I suppose, your Honor, if you take that view of the situation, the only thing we could do would be to put the steamer in a nice balanced trim; about half a load; so that you would be very buoyant and very lively.

Q. Will you get at it in tonnage of this boat?

A. I am saying if you were to put this vessel into an ideal condition where she would be in the best possible condition, on account of seas, why you would probably have only about half a load in her.

Q. Will you give me that in tonnage, please?

A. Well, probably 1800 tons. Now mind you that is a perfectly ideal condition.

Q. And what draft would you say that would be forward and aft?

A. Well, sir, I would have to look at the plans. I have not got any figures on that.

Q. I knowing and you knowing that they might not jibe when figures are put together, what would you say was the ideal draft?

A. A perfectly ideal draft for the vessel would be somewhere 14 to 15 draft.

Q. You mean mean draft?

A. Mean draft, I am talking about. You can have that 331 boat drawing 13 forward and 14 amidships and 15 aft, that would give you a mean draft of 14 feet. While it might be an ideal condition from some point of view it would not be an ideal condition as far as her wheel was concerned. There would be a great tendency to racing as soon as you got in bad weather.

Q. Now tell me more about that. About the racing. What do you mean by racing?

A. When the steamer got in bad weather of course the engine running all the time has got to work against the resistance of the wheel, when a vessel is in bad weather and is at times deep in the sea and at times the wheel is thrown out of the water, and when the wheel is thrown out of the water the resistance is removed, and it turns over very rapidly and is likely to destroy itself.

Q. Do you know of cases where that has occurred?

A. I don't call any to mind now, but that is a matter you know that the engineer has constant anxiety about, when she is outside. If there is any tendency for the ship to race he has somebody to stand by to throttle the engine down. That does happen very frequently.

Q. Well, I want that and everything else taken into account now in giving these ideal conditions as you fix them for this boat.

A. Well, I think your Honor, I would let it stand as I have already stated.

Q. Now if she was loaded say with pulp wood what would she be likely to draw?

A. She would not draw so much.

Q. What would be a full load of pulp wood for that boat?

A. I don't know.

Q. You may refer to some of these bills of lading for that.

Mr. Hill: Here is one 21 or 2,200, 2,200 short tons and 1,100 cords. It is given both in cords and tons, about twice as many short tons as there are cords.

By the Court:

Q. Do I understand it to be your opinion now as you leave this condition, this so-called ideal condition, and go either way from that it would not be so desirable?

A. From an ideal point of view, no, sir.

Q. Now as you went from that down to decks awash, and going in that way, the load increasing is it a gradual gain from the ideal to the point of danger or does it go suddenly in your judgment?

A. It is a gradual gain.

Q. Now I understand it to be your opinion the point of real danger is where?

332 A. Well, I suppose the point of real danger would be when we had the steamer loaded down to where your reserve buoyancy is very small.

Q. How small would be the point of danger?

A. Oh of course we have never experimented with that part of it, but I would say if a ship did not have 15% of buoyancy she would be in pretty bad shape.

Q. How would that put the decks on the ship, to give her 15% of buoyancy?

A. I imagine the decks would be under water.

Q. That would be a minus?

A. Well I would say if that ship was loaded down so that the water was completely over her decks and part way up the coamings, that her reserve buoyancy would be—and taking about half of the capacity of the poop deck, underneath the poop deck, I would say that her reserve buoyancy had been decreased sufficiently to make it hazardous.

Q. That would be minus how much freeboard?

A. It would be drawing about 20 feet of water, and would have the crown of the deck and the coamings, the water would be all over her deck.

Q. Decks to, is just to the top of the deck, even with the water?

A. Yes, sir.

Q. How deep would the water be on the top—

A. I should think pretty nearly 2 feet. Mind you, that steamer is dangerous then.

Q. What I want to get is the point where in your judgment she would be in danger and the first point; that was the point I was asking you to give me. Tell me where in your opinion the danger line would be?

A. I think it begins even a little earlier than that.

Q. That is what I want your very best judgment on.

A. I will tell you very frankly I would not want to load that steamer down to that draft and expect that she would go through, but there is a point perhaps between that and 18 feet where I think it would be safe for her to go through.

Q. Now, as I understood it, from the standpoint of your computation and from mechanics, and buoyancy, you would figure there would be 15% of buoyancy left?

A. We would have to get her down pretty near to that point.

Q. Do I understand now that a boat that has 15% buoyancy is safe and seaworthy in your judgment?

A. No. I would not say so. I think you have got pretty close to the danger point then.

Q. I want to get your best judgment as to the point it becomes dangerous, where your testimony would change, and you would say it was beyond where she was safe and seaworthy, and it had become dangerous?

A. I think to be perfectly safe I would want at least 5% more.

Q. That would make it 20% of buoyancy?

A. Yes, sir.

Q. Now, let us find out where she would be, if she had 20% of buoyancy?

A. I think that ship would be perfectly safe at 18-6 draft.

Q. What would her percentage of buoyancy be?

A. At 20% she would be 18-6 mean draft.

Q. Where would the water be at the edge of the deck?

A. About 6 inches deep.

Q. Minus 6 inches free board?

A. Yes, sir. Now, I am taking into account there the crown of the deck, and the very high hatches which she has.

Q. How much of a gale do you think she would stand, down there?

A. I don't think she would stand very much of a gale. She would have to have good weather.

Q. Then you don't mean you would call her seaworthy, do you?

A. Not at 18-6 I would not.

Q. Well, I understood 20% was the point of safety?

A. That is quite true, but you are taking some chances.

Q. Why do you stop at decks to then?

A. Because I have seen so many vessels do it, and do it with perfect safety.

Q. I understood you say that with their decks awash, and yet you do not recommend it?

A. I do not recommend. No, I don't think it is just the right thing to do, but I have seen it done so many times.

Q. Why not?

A. Well, that is a pretty close margin of safety.

Q. I am not sure that I get just the full force of those figures. That computation you made at first, is that the result if you would reach, if you would take that boat on your tables, and your mathematics, and were to tell me just as near as you could, what draft she would have loaded in these different ways; that you would give me

erroneous results, according to these differences indicated here; that mathematics would lead us that much astray from the truth?

A. I do not get your meaning, your Honor.

Q. For instance, in the first one you reported a difference of $2\frac{3}{4}$ inches between that recorded on the bill of lading and what your figures would give her, and in the next one $11\frac{1}{2}$ inches, the next $11\frac{1}{2}$, and then next one $12\frac{3}{4}$, and so on through, giving me a discrepancy, we will call it, or a difference?

A. Yes, sir.

Q. Am I to understand it, as your opinion, and do you think that is the thing for me to find and understand from those figures, that the mathematics and experience of shipbuilders and architects lead us that much astray from the facts?

A. Yes, sir.

Q. Am I to get the idea, then, that you think the bills of lading were incorrect?

A. I am inclined to think the report of that first bill of lading must be wrong, or something wrong about it.

Q. Let us leave that out then; take the next one and there is a difference of $11\frac{1}{2}$ inches. Which is it that has gone astray, the theory of it, or are the bills of lading wrong in your judgment?

A. I think, as far as the slight difference there is concerned—

Q. That is a big difference in the draft of a boat, practically a foot?

A. Yes, something like that. That is a foot variation there. That might come from—

Q. That is quite a difference in the mean draft of a vessel?

A. Yes, sir.

Q. And quite uniform?

A. Except the first one they seem to be uniform.

Q. Now, is it your mathematics that has gone wrong—I don't mean by that mathematics, the figures are correct, are they not, you are satisfied of that?

A. I think the figures are correct.

Q. And you have gone according to certain tables and theories of shipbuilders in making those computations?

A. Yes, sir.

Q. Are those theories in error, is that a mistake of the shipbuilding tables? Or a mistake in the entering of these bills of lading?

A. I cannot say. There really ought to be no mistake in the theoretical computations. It is the same we have all used for years.

Q. Let me ask you this question: Take the one of June 3, 1912; she had on 3,197 tons, so the figures say, and their records show a draft forward of 16 feet, aft 17-6, mean draft of 17; your figures show a mean draft of $17\frac{1}{2}$ inches, a discrepancy of $11\frac{1}{2}$ inches; do you think her draft was in fact, if she had that on, 17 feet and $11\frac{1}{2}$ inches, or do you think it was 17 feet?

A. I don't know. I did not make the displacement scale myself, and I have had no opportunity of going over the lines of the vessel. These bills of lading are presented to me as being correct and proper.

335 Q. From your experience which do you think is the safest for the court to be governed by; there are 2 sets of figures a foot apart.

A. If I were not so modest, I would say, inasmuch as I did not make the displacement scale, I would suggest that we take the bills of lading.

Q. Can't you make the displacement scale now, and show me where—

A. No, I could not do it, unless I had the lines of the boat, and had ample time to do it. It is quite an intricate calculation.

Q. I know, but this is an important matter, too?

A. Quite true.

Q. A foot is quite an amount in the mean draft of a ship, when she is in a storm?

A. Yes, it is a good deal.

Q. But there is a difference between what you call danger and the safety line?

A. Yes, sir, between danger and safety.

Q. As I understand it, you have explained this to me all you can?

A. Just as well as I know how. If there is any question I have not answered, and can answer, I would be glad to do so.

Q. Well, I have asked you everything I can think of, and I thank you. I want all these witnesses to know that I appreciate their helping me, and you gentlemen helping me too.

By Mr. Masten:

Q. Eliminate the first calculation you made on the first bill of lading, you find a close relation between the variations of the other 4 and 5, which you examined?

A. Yes, sir, there is only a small discrepancy between each of the others, which I would not consider of any consequence.

Q. Where the variation does exist, except in the one case, it is a related variation?

A. Yes, sir.

Mr. Laws: Do you know any set of recognized rules that allow a vessel to go to sea with heavy weather expected, with her decks awash?

A. No, sir.

By Mr. Masten:

Q. Within your experience, Mr. Gaskin, has there ever been any fixed relation of reserve buoyancy or depth of loading in reference to lake vessels, or has it been left to each particular vessel and the judgment of the master?

A. It has been left to the judgment of the master, and the judgment of the people who build and design the ships.

Q. There has been no fixed rule governing it?

A. No, sir.

336 Q. And what you said in connection with racing, and the man standing by the throttle, I don't think you sufficiently explained to the court what you meant by that.

A. That is to shut off the steam so the engine would not turn over so rapidly to throttle her.

By the Court:

Q. I understand it would take you a long time to be prepared to tell me what draft you claim she would draw with a certain given load, for instance, the load she had on in the ship in question? Are you prepared now to tell me what water she would draw with that load which she had on on the trip she was lost, 2950 gross tons?

A. The only way I could possibly do that would be to refer to this displacement scale, and if I referred to that displacement scale, I could give the same answer which Mr. Logan gave, 18 feet 6 inches.

Q. Where did you get that displacement scale?

A. That is furnished by the builders of the vessel.

By Mr. Masten:

Q. Could you take this bill of lading and which is endorsed 2961 gross tons and 460 pounds, and giving a draft of 16-9 forward and 17-11 aft, and make a comparison between that and 2950 tons, which if this be right, would give the draft at 2950 tons, taking the same trim of the vessel, for- and aft, what would that be making her draw?

A. With that 2961 tons she had a mean draft of 18-4¾.

The Court: Where do they get the figures?

Mr. Hill: Those are put on by the shipbuilder.

The Court: The figures you gave me, that you have used as your basis, and Mr. Logan has used as his basis, you say you got it from where?

A. From the displacement scale that is in evidence here.

Q. Who put them on?

A. The ship builder.

Q. Who was that?

A. The American Shipbuilding Company.

Q. How was that done?

A. It is calculated from the lines of the vessel in the drawing room. This is the displacement scale, your Honor (referring to paper).

Q. Tell me from your experience, are discrepancies of a foot common in the art?

A. It is not uncommon, your Honor, to have a ship carry considerable more than the displacement scale shows. That is not uncommon at all.

337 Q. How much difference in tonnage would there be between a draft of 17 feet and 18 feet, say?

A. 500 pounds I would say. At 17 feet her displacement is

4,378 tons, about. If you deduct that from 4,660 you would have what the difference is. It is about 23 tons to the inch.

Q. Well, that is 282 tons; do I understand that when a boat has a mean draft of 17 feet, that it would take 282 tons to put her down to 18?

A. Yes, about that.

Q. Then, to put it another way around, there is a mistake of about 282 tons in her displacement, or in her carrying capacity—on 18 foot draft?

A. Yes, about that.

Q. Now, let me ask you this: Is that a common thing?

A. I have heard of such cases, your Honor, but I have never been personally acquainted with them.

Q. How close do they usually tally out between the mathematics of it and the practical side of it?

A. Oh, within 5 or 10%—5%. Of course, there are a good many variations in the building of ships of this kind, a great many variations that occur in building; it is not a watchmaking proposition you know.

Mr. Masten: Is it true, where two ships are built over exactly the same lines, they will create a difference in actual construction?

A. Oh, yes, sir. Sometimes great differences occur, even the government measurement is different, one vessel will have several tons more measurement than the other ship will, and they are both the same size, built over the same lines.

Q. And will carry different amounts of cargoes?

A. Yes, sir. And they will carry different amounts of cargoes.

ALEXANDER HYND, after being duly sworn on behalf of the respondents, testified as follows:

Examined.

By Mr. Masten:

Q. Where do you reside?

A. Cleveland.

Q. What is your business?

A. Consulting engineer and marine surveyor.

Q. Tell us, generally, what your experience in that line has been, either on the Great Lakes or elsewhere?

A. I have had experience in Scotland, where I served
338 my time in the shipyard and machine shops and drafting rooms. I did repair work for a year in London; sailed for about five years at sea. In this country since 1891; draftsman of the Globe Iron Works for over six years; engineer and surveyor for the Great Lakes Registry for seven years; and I have been in business in a partnership, and in personal business for the last 13 years.

Q. In the same general character of business which you have described?

A. Yes, sir.

Q. Were you acquainted with the Steamer Noble?

A. Yes, sir.

Q. From personal inspection or simply from an examination of blue prints which have been introduced in evidence?

A. Personal inspection, as well as from the blue prints.

Q. And what character of ship do you say she was from your personal inspection? As to good, bad, or indifferent, strong or weak or what?

A. A good little ship of her style of build.

Q. You have heard Mr. Gaskin's testimony in reference to the amount of reserve buoyancy that she had?

A. Yes, sir.

Q. Did you check up that computation yourself?

A. I made some figures Sunday roughly, and since then have gone over these figures, and brought them down to practically what Mr. Gaskin has given.

Q. How much do you vary from his figures, if at all? I understand you have checked them with his figures?

A. Yes, sir.

Q. How much do you vary?

A. We do not vary at all in the final arrangement or figures. I figured on the beam at 42 feet, but there is practically no difference in our final figures.

Q. What do you say, Mr. Hynd, as to that ship being in a seaworthy condition if she had six inches of free board?

A. In that condition I should think she was ample, perfectly seaworthy.

Q. Your figures were made at 18 feet, the same as Mr. Gaskin's draft, of course?

A. Yes, sir. I made the figures at 18.

The Court: What about her free board at 18?

Mr. Masten: That is just decks to at the lower port. That is all.
Mr. Laws: No questions.

339 By the Court:

Q. What do you think the draft would be, with 3,305 net tons of cargo, and 160 tons of coal, I think that is the testimony, when she left Conneaut?

A. I have no means of figuring what her draft would be, except by comparing it with the displacement scale, and taking the figures from that.

Q. Did we get an answer with reference to those figures from Mr. Gaskin? I would like to have one of these witnesses figure it out for me from your bills of lading, what those drafts were, with this particular cargo.

Mr. Masten: Mr. Gaskin says he will do that.

The Court: All right: That will give me a chance to compare that with the testimony of the different witnesses. How much do you think she would make out of the water aft; how much less

her draft would be when she had burned up say half of that coal, 80 tons of the 160, how much less would her draft be aft?

A. Possibly 8 inches, 7 or 8 inches.

Q. How would that affect her draft forward?

A. She would go down some forward.

Q. How much?

A. 3 inches possibly.

Q. Making her mean draft then $2\frac{1}{2}$ inches?

A. Her mean draft would be more than that. It would be nearly 4 inches.

Q. How do you figure that?

A. That would be her mean rise because she will draw about an inch to 22 tons. If she lightens up 80 tons she will come up nearly 4 inches, mean. Taking roughly what that would be fore and aft, I could not say, but her mean rise would be about 4 inches.

Q. Well, at some parts of the rise it would vary, would it not?

A. It would not be any more.

Q. After she gets lighter more, she comes up faster as you take off the load?

A. That will vary with the individual ships.

Q. Loaded at 18 feet, she would not rise as much by taking out 80 tons of coal, as she would if she was drawing only 16 feet?

A. No, because she will go down and come up faster at the lighter draft than she would at the other draft.

Q. None of you have figured that out either, have you? Taking the way she was loaded, how much would she come up, what would actually happen?

340 A. The way she was loaded at the 18 foot line she will show about 21-8/10 tons to the inch approximately.

Q. Have you figured that out?

A. Yes, sir, that is the area of her water plane at the 18 foot draft.

Q. Isn't she smaller forward than she is aft; if she is going down forward, and up aft—

A. I cannot say that, because I haven't got her lines, only her general coefficient.

Q. Aren't you disregarding something that would make her come up slower, if you are taking her smaller forward than aft—

A. The mean would be the same, in either case; the mean rise would be the same in either case, because it would only affect the total displacement.

Q. Are you sure about that?

A. Yes, I am sure of that.

Q. What do you say the danger point in percentage of buoyancy is; first, what buoyancy should a vessel have, what margin of buoyancy?

A. The general allowance is between 20 and 25%.

Q. Well, what do you mean by that? Is it dangerous to have less than 20%?

A. A vessel is usually figured to have about 20 or 25% of reserve buoyancy.

Q. What for, for canals or stormy weather or what?

A. That is only the general figure for reserve buoyancy on ships.

Q. At any particular season of the year of kind of weather or kind of navigation?

A. It might effect the variation between 10 and 25%. They might have 25% in bad weather and 20% in good weather.

Q. Is it your opinion, from your experience, that for bad weather to go below 25% is dangerous?

A. I would not say where the danger point would come in. I have known ships that were a great deal more comfortable and safer with considerably more, or less cargo than when they were very heavily loaded. I have a case in mind where we crossed the Indian Ocean with a very heavy load, right in the height of the monsoon season, and unloaded a part of the cargo at a Mediterranean port, crossed the Bay of Biscay in a heavy storm, with at least 25% of the load off, I think it was more than that, and we were in very much worse condition with the light load than we were with the heavy load in the Indian Ocean.

Q. Where would you say is the best, I think you have called it the ideal condition, where in your judgment would be the ideal place, if you were going to place her for the greatest efficiency?

341 A. It depends on so many conditions, I don't think it is possible to give an answer.

Q. Can you tell me then, from the other way, where it does get dangerous?

A. The question as to where it gets dangerous should involve danger from what conditions and from what causes.

Q. Danger of storm, wind and sea?

A. I can only say, from the first instance I gave you, we were very much better off with a heavy cargo in her than we were with a light cargo. We were down and had flush decks, the water washing over all the time, and yet we were riding much more comfortably with heavy cargo than we were when we were lightened up.

Q. Take it with the Noble, what did she have to draw most, forward and aft, to be safe, loaded with iron?

A. I would not say what most she would draw, I would say loaded, and well-decked, a ship like that loaded down to 18 feet, an experienced captain I think would take her out.

Q. Do you say in a heavy gale she would be perfectly safe then?

A. With everything in good shape and tight, she would be safe almost from anything, barring a smashup or an accident or something that was entirely beyond all means of control.

Q. Well, suppose she parted her chains and went into the troughs of the sea?

A. She is then in bad condition.

Q. Would she be any worse if by loading 18 feet than though she was not?

A. That would depend on other conditions. She might be just as bad off, as if she was drawing only 15 feet.

Q. What do you think about it, whether she would be or not?

A. I would not say. She might be as badly off at 15 as at 18,

in bad weather, with a broken down steering gear, or a broken down engine. She would be just as badly off one way as the other.

Q. You think she is just as likely to ride the gale and the waves deck to as you would with 3 feet out of the water?

A. With everything well on board, yes, sir.

Q. How?

A. With everything going well, yes, sir.

Q. That is all.

342 EDWARD GASKIN, (Recalled), on behalf of the respondents, testified as follows:

Examined.

By the Court:

Q. Have you those figures, Mr. Gaskin?

A. Yes, your Honor. As I understand it, the amount of the last cargo was 2,950 gross tons. If you will refer to the cargoes of July 10, 1912, that was 2,956 tons gross, and July 27, 2,961 tons. The draft reported at that time was 6-10 and 18 feet, making the mean draft 17-5. Now, the total displacements on that particular ship with the coal was 4,764 tons, and the displacement scale would indicate she should be drawing 18 feet 4½ inches, whereas, she was drawing 17 feet 5 inches.

Q. A discrepancy of 11½ inches?

A. Yes, sir.

Q. Now according to the bill of lading figures, what would your free board be?

A. There would be 7 inches free board.

Q. Would your free board be 16-10 forward and 18 aft?

A. 7 inches at the lowest point or sheer.

Q. Does it not matter how she is trimmed, as to what her free board is?

A. Yes, sir.

Q. Well, you get it from 17-5—

A. You add 16-10 and 18 feet together, and divide by 2 and it gives the mean draft, 17-5, which we assume to be the lowest point of the sheer, the place of lowest free board.

Q. But that is assuming you have got deck lines running straight. Your deck does not run straight?

A. No.

Q. As a matter of fact that may not be the lowest place then?

A. That is the lowest place, yes.

Q. Now, how does it happen that there is a heavier load—taking the cargo of July 27—and a little less draft?

A. I suppose that is the personal equation of the man who took the draft.

Mr. Masten: Or difference in the amount of coal or water?

A. Something of that sort. There may have been more water in the boat. There are so many things to affect that. Of course, all these estimates are based on 100 tons of coal, and they might not

have had more than 25 or 30 tons at times, and again they may have had full fuel on.

Mr. Masten: In your last calculation, you did not put the amount of free board in the record?

A. It was 8 inches free board.

By Mr. Masten:

Q. Now I think the court's original question is this, and I will add to it a trifle, if I may: Taking those which purport to be actual weights on the bill of lading and the actual drafts as observed and placed on there, what would be the draft of the 2,951 gross cargo; how much would it vary from that, and what would be her free board, related to the draft?

A. 2,951 would probably be 18-4½.

Q. What would her free board be?

A. She would have minus free board.

Q. No, no. Assuming that the drafts given on the 3 bills of lading.

A. It would make a difference of about a quarter of an inch.

Q. So that if you assume all the conditions to be right, the 2,951 would have a little more free board than the 2,956?

A. Yes, sir. You would have 7 inches as I estimate it from this on the basis that the difference between 2,951 tons of the last cargo, is 6 tons less than the 2,956 of July 10, 1912, and assuming that the vessel carries in the neighborhood of 20 tons to the inch at her load draft, this would increase the free board about a quarter of an inch as I look at it, a little better than third of an inch.

By Mr. Hill:

Q. Just one question: The taking of 80 tons of fuel would raise her about 4 inches approximately?

A. I think it would raise her more than that.

Q. You think it would raise her more than that?

A. I think it would.

Q. How many tons per inch?

A. At the load line 23 net tons, but that is lifting the ship up bodily the whole length of her.

Q. In other words, that is her mean rise?

A. Yes, sir,—her bow does not go down correspondingly, taking out the fuel from the extreme end.

By the Court:

Q. If that coal was absolutely in the stern, then she would go down just half as much as it went up, if the ship was uniform in size, would it not?

A. If both ends were alike, and the center of bouyaney was in the middle—

Q. But the load is not absolutely in the stern, and both ends are not alike?

A. And the center bouyancy is not in the center of the ship.
344 Q. And you say she would go down in what proportion for practical purposes?

A. Not to exceed a third, and I believe I am very liberal at that. I think less than that would be right. I would think a fourth would be nearer right on that. That is if she raises 4 inches aft, I would say she went down one inch forward.

Q. Then say $\frac{3}{8}$, if we want her mean rise—

A. It would be a net rise of an inch and a half. That is the way I would look at it.

Captain CHARLES E. BENHAM, after being duly sworn by the court on behalf of the respondent, testified as follows:

Examined.

By Mr. Masten:

Q. Where do you reside, Captain?

A. Cleveland.

Q. What is your business?

A. Appraising and surveying.

Q. How long have you been connected with lake traffic in different capacities?

A. I commenced sailing a vessel in 1862.

Q. How long did you continue sailing?

A. More or less ever since; five years in the government service. Otherwise, I was in vessels on steam boats or tugs or something of that character or some man's wreck.

Q. What was the government service?

A. Custom house.

Q. And practically since 1862 you have been connected with lake shipping?

A. Yes, sir.

Q. And also have seen the change from the small wooden boats to the large steel vessels and acquainted with all of the types?

A. Yes, sir, from the smallest to the largest.

Q. Were you acquainted with the Steamer Noble?

A. Nothing more than from the plans which I went over down at the yard of the American Shipbuilding Company or the Detroit Shipbuilding Company along with Captain Gaskin.

Q. And the knowledge which you derived is from the blueprints and not from an inspection of the ship?

A. Yes, sir.

Q. Are you familiar with that type of ship?

A. Yes, sir.

Q. Assuming the ship to have been constructed in accordance with the blueprints, the work well done and everything in good
345 shape, what freeboard do you say would be safe for her under ordinary conditions?

A. I would say she would be safe with her decks awash forward of her house.

Q. Did you make any computation or estimate or anything pertaining to the reserve buoyancy of that ship?

A. I went over the measurements and figures of Captain Gaskin, and took practically his figures for the reserve buoyancy.

Q. You did not make any independent figures of your own?

A. No, sir. Hatches and one thing and another.

Q. And taking into consideration the same elements that he considered, did you arrive at about the same result?

A. Yes, sir.

Q. And is it a fact or not that there never has been within your experience or has there been, anything in the nature of a definite percentage for reserve or anything of that character on the Great Lakes?

A. There has not.

Q. You at one time I believe were connected with Lloyd's as a surveyor?

A. I did survey for them years ago, yes.

Q. In what years were those, or about?

A. I could only refer to that by the data when W. W. Bates was at the head of Lloyd's at Buffalo.

Q. And that was a number of years ago?

A. Yes, sir. Afterwards Drake was the head of it.

Q. And during any of the time you were connected there in that relation was there anything in the nature of a load line?

A. No, sir.

Q. Or to your knowledge even today on the lake by any one of the many vessels?

A. No, sir.

Q. What would you say as to a vessel making a trip to Lake Superior with 6 inches of freeboard?

A. I would consider her perfectly safe, that is, in any ordinary breeze of wind.

Q. If you have an accident of any kind to the ship, it is pretty difficult to tell what might happen, is it not?

A. It certainly is.

Mr. Laws: No questions, Your Honor.

(No cross examination.)

By the Court:

Q. You say she would be safe in an ordinary wind. What did you want me to understand?

A. I do not say that there is any point of safety on any ship.

346 Q. You did not understand my question. (Question read.)

A. I mean 50 or 60 mile gales—an ordinary breeze—of course, that is a heavy breeze, but we have had heavier. Barring some accidents.

Q. Do you think she would be safe in a 60 mile gale?

A. Barring accident, I do, yes.

Q. You said she would be safe with her decks awash?

A. The decks awash would be forward of the boiler house and No. 5 hatch. She would not be awash further forward; neither would she aft.

Q. What part of the deck. You say just forward.

A. That is about No. 5 hatch.

Q. And how deep would she be?

A. She would be 18 feet deep, according to your displacement scale.

Q. The deck is not level?

A. The deck has a crown of 10 inches.

Q. Tell me what you mean being awash, with reference to the crown?

A. Awash is at the deck level, at the side of the ship.

Q. How deep do you think the water is at the side of the ship?

A. Awash would be right level on the deck.

Q. Do you mean decks to?

A. No, sir. When she is decks to the side of the deck is below water, when she is in still water.

Q. How far below?

A. She is decks to when the water will stand on her decks when she is lying alongside of her dock and there is no movement in the water.

Q. Decks to, will it stand upon the deck?

A. When she is decks to there will be a certain amount of water on the deck, yes.

Q. When she is still?

A. Yes, sir.

Q. That is what you mean by being awash or decks to?

A. Yes, sir. That is a ripple on the water.

Q. Would she be dangerous if she was deeper than that?

A. It does not make any difference whether the ship is deep or light; there is a danger line always.

Q. I mean danger from heavy loading.

A. If you put her sufficiently enough deeper to overcome the buoyancy of the ship, why certainly she would be in danger.

Q. I say, I asked you how much deeper you would have to put her than before you had overcome the buoyancy, so she would become dangerous.

A. A sufficient distance or depth to overcome the surplus buoyancy—

Q. I am asking you, Captain, how many inches down would that be?

247 A. I can not tell, without a practical demonstration to settle the question, how much that would be.

Q. Can you not give me some idea?

A. A man might give an opinion or idea but that is not definite. I do not want to say definite.

Q. That is all you can give me about the Noble anyway is your opinion, is it not?

A. Yes, sir.

Q. That is what I asked you, for your opinion, about how far down you could put her before it became dangerous.

A. It is dangerous when she has got her *dacks* awash with water, or when she has them 6 inches out or 2 feet, for that matter, if you get into a breeze of wind.

Q. I asked you whether it was dangerous because she was loaded heavily. Is there any such place as loading them so they are too heavy and too deep down to be safe, so that they are dangerous?

A. Certainly. You can load anything down.

Q. Will you be good enough to give me your opinion as to when the ship is loaded so deep that she is dangerous. Like the *Noble*, how deep down she would be?

A. I don't know that. I can not enlighten you anything further than to state the depth she would go down would be to the point where she would sink, which would overcome the surplus buoyancy in the ship.

Q. She does not get dangerous, if I understand you correctly, until she gets down to where she would sink.

A. I say she is dangerous in bad weather, or any other ship, at many different points on her line.

Q. Let me understand you correctly. How many inches do you say it is that a ship like the *Noble* would have to be below, with decks to, before she would lose buoyancy, so she would become endangered from heavy loading.

A. I have not figured that out. There seems to be about 1300 tons of surplus buoyancy. The depth she would go down would have to be sufficient to overcome that buoyancy.

Q. And in your opinion how far down would that be?

A. Well she would have to be submerged to the rails, the house fore and aft——

Q. I don't understand that.

A. I say take her right straight through her, the height of her rail; that is about 144 feet from the houses, or the rail up to the poop deck on the fore-castle deck.

Q. How deep would that make the water on the deck in the deepest place?

A. The water would probably be on a level, if the vessel
348 was standing on level; the water would be 3 feet 6 inches to the top of the rail, less 10 inches on the crown of the deck.

Q. Will you figure that out for me and tell me how deep that would make the water in your opinion in the deepest place on the deck.

A. That is giving you the deepest place——

Q. How deep would the water be on deck in the deepest place?

A. That would be above the height of the rail.

Q. Will you figure that out in inches for me?

A. 36 inches is the height of the rail.

Q. Would you figure that out and give me an answer.

A. That 36 inches is the height of the rail. There would be

36 inches less the camber of the deck through the ship, as far as a straight line runs.

Q. Would you be good enough to tell me in inches how deep the water would be on the deck in the deepest place?

A. In the deepest place?

Q. Yes.

A. I am giving you a statement that covers not only the level portion of the water but at both ends of the ship. That makes the water higher at the forward and after ends of the ship than in the middle.

Q. I want to find out how deep the water would be in the deepest place loaded this way?

A. Do you mean in the deepest place so far as the whole is concerned, or do you mean the deepest place in the ship.

Q. You put on rubber boots and go down on the deepest place there is on the deck, and take a rule and stick it right down so that it touches the bottom of the deck, with the figure 1 at the bottom, and read up that rule. How many inches have you got at the top of the water. That is what I mean.

A. Understand me at that time we would not be wading around with any rubber boots to measure.

Q. That is still water, as I understand it. How deep would you load her to have her safe?

A. That is not the question which you asked as I understand it. It was how deep you would put her before she would sink, how much water you put on her before she would sink.

Q. I understood it, and that was the place you called the danger line?

A. I said I believed that was the danger line at any depth you loaded a ship.

Q. I mean how deep can you load it before it becomes dangerous, is what I want to get at. I want to know on the Noble, her water line, how deep you could put her in the water before, in your opinion—I want to get your opinion about it. That is what
349 I am trying to get. I want to know how deep you put her in the water, in your judgment, before you say now that is dangerous and she is not seaworthy because she is loaded too heavy. I want your opinion as to where that would be.

A. I say that through that ship an 18 foot line would be the line I would consider was perfectly seaworthy.

Q. I understood that. As she got beyond that, is she dangerous?

A. That would depend on the circumstances existing at that time. There might be water on her up to her rails, and she might not sink or be in danger of sinking either.

Q. I mean the ordinary navigation on the Great Lakes, for a trip to Lake Superior, the first trip in the year, April.

A. That vessel, loaded to the line of her deck in the spring of the year or any other time of the year, under her construction, there is enough surplus buoyancy in that vessel to navigate Lake Superior or any other of the lakes.

Q. Loaded to any depth?

A. No. I said loaded to the 18 foot mark; that shows the deck line.

Q. I wanted to know if you load her deeper than that, at that season of the year, is it dangerous because she is loaded deep?

A. The question of danger enters, but no sensible man is going to load his vessel to a certain distance under water. His judgment would tell him it would be improper.

Q. I want to know what your judgment is, whether or not you would say it would be dangerous to load it any deeper than 18 feet deep.

A. I say my judgment—

Q. Before you answer that let me ask you this: Do you think it is improper to load a vessel so her deck would have a certain amount of water on?

A. You say it would be unseaworthy?

Q. I say is it improper or would she be unseaworthy?

A. I do not say she would, no, sir. She might be perfectly seaworthy. It would require a practical demonstration to settle that whether she would or not.

Q. What is your opinion as to whether she would be or not.

A. You explain to me the circumstances under which she would be, those things she would come in contact with in that condition, and I will endeavor to give you as good an answer as I can.

Q. Take the things which she is likely to come in contact with in the spring of the year on the first trip up Lake Superior.

A. I would not feel like putting that vessel decks under water in the character of weather she had apparently that trip she made up there.

350 Q. Do you want me to understand that you think she would be loaded too heavy?

A. I am not saying when she is loaded too heavy, because you have to give me a practical demonstration of the operation of that vessel before I will settle the question as to when she is loaded too heavily.

Q. That is all.

Mr. Masten: We had one witness, your Honor, who could only get away from home a single day. He will be here tomorrow morning, and it will only take a short time to examine him and it will be something that will not affect their side of the case in putting him in.

The Court: State his name and what you expect to prove by him.

Mr. Masten: Captain Jones, with whom this captain served as mate in boats of something of this type, who will testify as to his experience, having carried steel rails, and being familiar with those cargoes.

The Court: Aside from that you rest?

Mr. Masten: Aside from that we rest, your Honor.

The Court: You may proceed with the rebuttal.

Mr. Hill: If your Honor please, can you take a five minute recess and we will call the witnesses whom we have at the office,

so as to bring them here. We have a number of witnesses but they will be short, and they will go very fast.

(Recess.)

HENRY NEUSBAUMER, after being duly sworn by the court on behalf of the claimant, testified as follows:

Examined.

By Mr. Laws:

Q. Where do you live, Mr. Neusbaumer?

A. 421 East Jefferson Avenue.

Q. In the City of Detroit?

A. Yes, sir.

Q. What is your business?

A. Electrician.

Q. For what company or concern do you work?

A. The Huron Portland Cement Company.

351 Q. And where is their place?

A. The corner of Riopelle and Atwater.

Q. Is that down towards the river?

A. Yes, right on the river bank.

Q. How far from the river bank?

A. They go right to the river; that is where they unload is right on the river bank.

Q. Did you see the Steamer Benjamin Noble in April, 1914?

A. Well I seen her last spring; I don't know just the date.

Q. Last spring?

A. Yes, sir.

Q. Had you ever seen her before?

A. No, sir.

Q. Have you ever seen her since?

A. No, sir.

Q. Where was she lying at that time?

A. Lying at the foot of Riopelle, partly by the Riopelle St. dock and the company's dock.

Q. Was there anything to call your attention to the Benjamin Noble?

A. Yes, sir.

Mr. Canfield: Objected to as not proper rebuttal.

The Court: Objection overruled.

Q. How was your attention called to the Benjamin Noble?

A. By the foreman of the plant; that is the foreman of the Huron Portland Cement Co. He told me she was overloaded, and I walked down to look at her.

Q. What did you do?

A. I went down and got on her; jumped from the dock onto her.

Q. Then what if anything, did you notice about the boat after you got over on her?

Mr. Canfield: The same objection, it not being proper rebuttal.

The Court: How about that, Mr. Laws?

Mr. Laws: There was no evidence at all as to her condition at Detroit.

The Court: And it is to meet that?

Mr. Laws: Absolutely.

Q. When I got down onto her there was water splashing from the river onto her deck.

Q. And how did it get on her deck?

A. Through the little holes about that big (showing) in the railing, on top of the deck. It was above the deck, the holes above the deck to let the water off that comes on the deck.

352 Q. Was there any water on the deck?

A. Yes, sir. It kept splashing on and running off.

Q. How far did it run up on the deck?

A. It came up about 4 or 5 feet.

Q. That is toward the middle of the deck?

A. Yes, sir, and then run back again.

Q. How far from the forward end of the ship and the after end of the ship was it that this water was running on the deck in that way?

A. Close to 20 feet.

Q. And was that on both sides of the ship or one side?

A. It was more on one side than on the other, because the wind was blowing across the river.

Q. How was the wind at that time?

A. It was not much of a breeze; probably a little bit stronger than it is today.

Q. Was there much of a wave on?

A. Not a great deal.

Q. How often did you go down on that ship?

A. I was on her twice.

Q. Did you see the same thing?

A. Yes. I seen water on her both times.

Q. On the side toward the land, how much water was there on her, if any?

A. There was some came on, as it would come up and hit the dock, it would splash back on the deck.

Q. Did you see the captain of the boat?

A. Yes, sir.

Q. Did you hear him talking about the ship to anybody.

Mr. Canfield: That is objected to as incompetent.

The Court: The objection is overruled.

Q. Go ahead.

A. All I heard him say there—now I do not know to whom he said it—I don't remember that—that he thought the boat was pretty heavily loaded for that time of the year.

Q. How many persons were standing around when he said that, do you remember?

A. There were three or four there.

Q. Do you know whether any other of your men went to look at this boat?

A. Well I know Mr. Peterson.

Q. He is the gentleman here?

A. Yes, sir, and Mr. Broadwell; he is up at Fenton at the present time. Mr. Bird. I know them.

353 The Court: Who is he?

A. He is up at Fenton.

Mr. Laws: We will try to get him here tomorrow.

Cross-examination.

By Mr. George L. Canfield:

Q. What day was this?

A. I could not say the date.

Q. Was it Sunday?

A. Do you mean the day I was on her?

Q. Yes.

A. I was on her either Monday or Tuesday. I do not know which.

Q. You do not know which?

A. I think it was Monday.

Q. You think it was Monday. Is there any doubt about it?

A. I would not swear to the day one way or the other.

Q. What time of day was it?

A. I was on her in the morning and in the afternoon.

Q. What time in the morning?

A. I should think about 9 o'clock.

Q. What had you been doing before?

A. Before that?

Q. Yes.

A. I was working.

Q. Where?

A. For the Huron Portland Cement Company.

Q. Where is their office?

A. The main office is in the Ford Building.

Q. What office have they near the foot of Riopelle Street?

A. Just the superintendent's office.

Q. And you were in the superintendent's office?

A. No. I was working in their mill.

Q. What were you doing?

A. I was the electrician there.

Q. What were you doing there?

A. I was taking care of my own work.

Q. What was this work?

A. Looking after the motors

Q. Were you there regularly or just had to stop there?

A. I am there every day steady.

Q. Are you employed there now?

A. I have been there over two years.

Q. What sort of a day was it?

A. Now I would not say for sure but I think it was a nice bright day, when I was down there.

Q. You walked down.

A. Yes, sir.

354 Q. How did you get out over the dock?

A. Just jumped from the dock on the boat. The boat lay below the dock.

Q. Are you sure she lay below the dock?

A. Yes, sir.

Q. Where was her bow?

A. Right at the company's dock. I jumped onto her deck.

Q. What company?

A. The Huron Portland Cement Co.

Q. They have a dock?

A. Yes, sir.

Q. What was going on at that time on the dock?

A. There was not anything that I saw.

Q. The dock was solid?

A. Yes, sir.

Q. You walked out there?

A. Yes, sir. I walked on the dock and jumped on the boat.

Q. How did you jump on the boat?

A. Like anybody would jump?

Q. How about a gang plank?

A. There was not any. You didn't need any.

Q. Did you climb up?

A. I didn't have to.

Q. What did you do?

A. Looked at her and went back to work.

Q. Did you stand on the rail?

A. No, sir, I didn't?

Q. How did you get down from it?

A. What? From the rail?

Q. Yes.

A. She only had about a 4 foot rail.

Q. How did you get down from the rail?

A. From the dock?

Q. From the rail. You told us you got as far as the rail. Now where did you go from the rail?

A. I jumped on the deck.

Q. Did the water splash up when you jumped?

A. Yes, there was water splashing on the deck when I jumped.

Q. Did the water splash on you?

A. No, sir.

Q. Did you get your feet wet?

A. No, sir.

Q. Did you have rubbers?

A. No, sir.

Q. Which side of the boat did you stand on?

A. On the left hand side.

Q. How soon after was it that you jumped back?

A. I was about 15 minutes on there before I went back.

Q. Where did you go on the boat?

A. Just on her deck.

Q. What part of the deck?

A. On the forward end of it.

Q. In what condition were the hatches on?

A. Some was open.

355 Q. Water running into them?

A. No, sir.

Q. Did the water run up close to the hatches?

A. No, sir, not the one that was open. She only had her forward hatches open.

Q. What other boats passed as you were there?

A. I did not see any.

Q. What was the condition of the river?

A. There was a little wave but not very much.

Q. Water smooth?

A. It was pretty fairly, a little ripple, but not what you would call rough.

Q. Which way was the wind?

A. I think the wind was south.

Q. Which way was the smoke blowing from the chimneys down there?

A. I could not say as to that.

Q. What makes you think the wind was south?

A. On account of the waves hitting on the side of the boat.

Q. The waves were hitting the southerly side of the boat?

A. Yes, sir.

Q. And making a noise?

A. I did not pay no attention to the noise.

Q. You did not pay any attention to the noise?

A. No, sir.

Q. How many openings in the deck were there?

A. I did not count them.

Q. How was the water coming through that you tell about?

A. It was coming through what is called the scuppers. I call it a hole, but they say it is a scupper; for the water to run off.

Q. What did they look like?

A. Where it came in?

Q. Yes.

A. It was a hole about that long and about that high (indicating); right above the deck, right in the rail.

Mr. Canfield: The witness indicates by his hand a space about 15 inches long and 12 inches wide.

A. I should judge somewhere about that; I would not say for sure.

Q. Was it open or closed?

A. It was open.

Q. How would the water spurt in there?

A. As a wave would hit it.

Q. What did the water do after it came in?

A. Because the thing was so low in the water it could not do anything else but come through there.

Q. After it came in what did it do?

A. Why the waves would go back; it would run off, run back.

Q. How far up on the deck would it come?

A. 5 or 6 feet.

356 Q. Did you measure that?

A. No, but I should judge about that.

Q. That is your estimate?

A. Yes, sir.

Q. How high were the waves right out in the river?

A. They would not come over that high I should judge (indicating).

Q. About 8 inches?

A. About 8 or 10 inches.

Q. 8 or 10 inches?

A. Yes, sir.

Q. Any white caps?

A. No, sir.

Q. How long were you on the boat while you were observing these things?

A. About 10 or 15 minutes.

Q. Who else did you see on the boat?

A. I saw Mr. Bird on there and the captain was there, and some other men were working there.

Q. What kind of a looking man was this captain?

A. Well he was a man about your height, a little better heavier than you; I think he was clean shaven, if I am not mistaken, and rather on the light order, light complexion, and a man I should think about 28 or 29 years old.

Q. What sort of a uniform did he have on?

A. Well, now, I didn't notice his uniform, only I noticed he wore a cap altogether.

Q. What sort of clothes was he wearing?

A. I could not say as to that.

Q. Where was he standing?

A. Standing on the deck.

Q. Which part of the deck?

A. On the forward part of the deck.

Q. How near to the house forward?

A. I don't know what you mean by that.

Q. In the forward part was it?

A. I seen him standing there and I saw the men working in the hold of her.

Q. What was he doing?

A. He was not doing anything when I seen him.

Q. Did you stand near him?

A. Yes, within a few feet of him.

Q. Did you watch him?

A. Not very much.

Q. Did it interest you at all?

A. Not a great deal—not in him.

Q. What did he say to the men?

A. I didn't hear him say anything to them.

Q. What was he looking at?

A. Well now I don't know that. I didn't look down the hold to see what he was looking at.

357 Q. Then what did you do?

A. I went back to work.

Q. You think you may have been gone from work 15 minutes?

A. Maybe longer than that. I don't know. I should judge that

Q. Any trouble on the dock after you walked back?

A. No, sir.

Q. What time did you go down on the boat again?

A. I think it was the following day that I went down.

Q. What time?

A. I could not say as to that.

Q. Before dinner or after dinner?

A. I could not say.

Q. Daylight or dark?

A. Daylight; I only work in the daylight.

Q. And that was either Tuesday or Wednesday?

A. Yes, sir. I was down on her twice.

Q. Did you go down the same way?

A. Yes, sir.

Q. Whom did you see on the deck at that time?

A. I seen the captain, and I seen Mr. Bird then. There were two or three others standing there talking.

Q. What were they doing?

A. They were standing there talking to the captain.

Q. This man that you describe as the captain, is that the same man that you referred to before?

A. Yes, sir. I know it was the captain because he went up to the office two or three times to telephone.

Q. To telephone?

A. Yes, sir.

Q. You heard him telephone?

A. I seen him come in the office and ask whether he could use the telephone.

Q. Whom did he ask?

A. He asked the man in the office.

Q. Were you there when he asked?

A. Yes, I was in the office.

Q. What were you doing?

A. I have business often that takes me in the office.

Q. What were you doing when the captain came up to ask whether he might telephone?

A. I was in the office with the superintendent.

Q. The second time, how long were you on board the boat?

A. I could not say as to that.

Q. Five minutes or half an hour?

A. I could not say. I would not say any one way or the other.

Q. What did you go down there for?

A. Just to see, just to look around. I had nothing else to do at the present time.

Q. It is a good place to look out on the river?

A. Yes, passable place.

358 Q. A pleasant April day?

A. Yes, it was.

Q. You were not busy?

A. Not at that time, no, sir.

Q. The second time how was the water coming in?

A. About the same as it was the first time.

Q. How was the wind?

A. I could not say how the wind was.

Q. How about the boats passing up?

A. I could not say as to that because I did not pay much attention to the boats.

Q. Was the size of the opening just the same?

A. Yes, sir.

Q. The water coming in just about the same?

A. Just about.

Q. Running up 5 or 6 feet on the deck and running back?

A. Yes, sir.

Q. And murmuring a little?

A. I didn't listen to it.

Q. Was this the time that you listened to the conversation?

A. Yes, sir, the second time I was there.

Q. How did you happen to stand there and listen to that conversation?

A. Because the foreman of the plant was there and walked over to where he was.

Q. He was talking to the captain, the man that you describe as the captain?

A. Yes, and two or three others there.

Q. The foreman was?

A. Yes, sir.

Q. Who started the conversation?

A. I could not say as to that; they were talking when I got out there.

Q. How long did you stay there?

A. Not very long.

Q. Were they through talking when you went away?

A. No, sir, they were talking yet when I left.

Q. And what subjects were they talking about?

A. Just about the boat.

Q. What did they say?

A. All I know is what I heard the captain say that he thought she was pretty heavily loaded for that time of the year.

Q. What did the other people say?

A. They agreed.

Q. You stood there; did they ask you for your opinion?

A. No, sir, my opinion would not have been worth anything.

Q. This happened how long ago?

A. About one year ago, I guess. I don't know the days and dates.

Q. Since then you have talked with whom?

A. Regarding her?

359 Q. Yes.

A. I have not talked with anybody regarding her until today.

Q. Today is the first time it has come up again?

A. Yes, sir.

Q. That is all.

Redirect examination.

By Mr. Laws:

Q. Just one question. Was this water that you saw on the forward part of the boat or the back part?

A. It was on the back part of the boat.

Q. And when you got on the boat where did you get on her?

A. Just about—I jumped on about the middle of her.

Cross-examination.

By Mr. Canfield:

Q. Did you get your feet wet?

A. Why the forward end was dry; no, sir. It just came in on the back end.

Q. And what was on the back end of the boat?

A. Just her cabin and engine house.

Q. How close was it coming to her cabin and engine house?

A. It was coming in right close to it.

Q. How many of these openings did it come through?

A. I could not say it was one or two, but I should think there was two.

Q. How close together were the openings?

A. I could not say as to that; I should think about 15 feet.

Q. And they were the openings of the size you described?

A. Yes, sir. They may have been closer than that; I do not know.

Q. They were square or oblong?

A. Yes, sir.

Q. What did they seem to be made of?

A. They were not made of anything, only just a hole in the rail.

Q. Were they painted?

A. I could not say anything about the paint.

Q. How do you know this boat was the Noble?

A. I seen the name right on her.

Q. Whereabouts was the name?

A. On her pilot house.

Q. What color was the pilot house?

A. I could not say as to that.

Q. What color was the name?

A. Well now I do not know that.

Q. Do you know how many smokestacks she had?

A. She had one.

360 Q. What color was that painted?

A. I could not say.

Q. That is all.

PETER PETERSON, after being duly sworn by the court on behalf of the claimant, testified as follows:

Examined.

Mr. Laws:

Q. What is your business?

A. I am a millwright foreman.

Q. For what company?

A. The Huron Portland Cement Company.

Q. Where do you live?

A. 513 East Lafayette.

Q. And where is the Huron Portland Cement Company located?

A. The corner of Riopelle and Atwater.

Q. Is that at the river bank?

A. Yes, sir.

Q. Did you see the Benjamin Noble in the spring of 1914?

A. Yes.

Q. Do you happen to remember what month it was in?

A. I think it was in April.

Q. Where was she lying at that time?

A. She was lying at the foot of Riopelle Street, partly on the cement company's dock and partly at the D. U. R.

Q. And how was her bow lying, upstream or down stream?

A. Upstream.

Q. Was your attention called to that boat by anyone?

A. Yes, sir.

Q. Who called your attention to it?

Objected to as incompetent and irrelevant; objection overruled.

A. The foreman, and different fellows around there.

Q. What made them call your attention to it?

A. Mostly the way she was loaded.

Q. What did you do if anything when they called your attention to her?

A. I did not do anything right away; I went aboard of her later on.

Q. When did you go aboard of her?

A. I don't remember whether it was Monday or Tuesday; it was Monday, I believe.

Q. When you went aboard her how did you get aboard her?

A. I jumped off the dock, and from the rail on to the deck.

361 Q. What part did you go into, the forward or middle or after?

A. About the middle I believe.

Q. Did you notice anything on her deck, any part of the deck?

A. The water washing in on her deck.

Q. Which part of her deck?

A. The after part.

Q. How was the water coming in on her decks. How did it get in?

A. It was washing through the scuppers.

Q. What are the scuppers, as you understand them?

A. They are just a hole in the bulwarks for to let the water off the deck.

Q. How big were they in your judgment?

A. I should judge about 10 by 12 or 10 by 14—something like that.

Q. How far on to the deck did this water get?

A. 4 or 5 feet I should judge.

Q. 4 or 5 feet towards amidships?

A. Yes.

Q. And for how long a space on the deck fore and aft?

A. Between 15 and 20 feet.

Q. How close was it up around the engine house?

A. Why it was right up to the engine house.

Q. Right up to the engine house?

A. Yes, sir.

Q. Was it coming on both sides or only one?

A. Both sides.

Q. How was the wind the day you were on there, the first day?

A. I don't know.

Q. Was it strong or light?

A. Yes, it was a pretty strong wind.

Q. It was a pretty strong wind?

A. Yes, sir.

Q. Now the next time. You went on, you say, how many times?

A. Two or three times I believe.

Q. Two or three times. On each occasion that you went aboard did you see the same condition there?

A. Yes, sir.

Q. In other words, was water coming in on her deck each time you were aboard?

A. Yes, sir.

Q. And about the same as you saw it the first time?

A. Yes, sir.

Q. Tell us whether on the second time the wind was a light wind or how it was?

A. Oh, I don't know just how heavy the wind was. There was a little ripple on the water.

Q. Just a little ripple on the water?

A. Yes, sir.

Q. That carried it in—just flooded in on this deck?

A. Yes, sir.

Q. Did you notice how much higher the deck was than the level of the water?

A. I should judge about 2 or 3 inches.

Q. About 2 or 3 inches. Were there other men looking at this boat?

A. Yes, sir.

Q. Cross examine.

Cross-examination.

By Mr. Canfield:

Q. Where did you say you were employed, Mr. Peterson?

A. The Huron Portland Cement Company.

Q. What is your business there?

A. I was repair man at the time.

Q. What were your hours?

A. 6 to 6.

Q. 6 to 6.

A. Yes, sir.

Q. What was the last time you went down on this boat?

A. I don't just remember.

Q. How is that?

A. I don't remember what day it was or what date.

Q. And you don't remember what time of day it was?

A. No, sir.

Q. Do you remember what kind of day it was?

A. It was a day a good deal like today.

Q. A rather cold day?

A. About the same.

Q. Did you notice any breeze at all?

A. Yes, sir.

Q. Which way did the breeze seem to be?

A. It seemed to be from the south or southeast.

Q. Now from the southeast?

A. I should judge. I did not pay very much attention.

Q. Have you ever sailed?

A. Yes, sir.

Q. And are you familiar with boats?

A. Yes, sir.

Q. What have you sailed on?

A. On the E. J. Ehrling, and the Russell Sage.

Q. What were you doing on those boats?

A. Fireman.

Q. You sailed up and down the lakes there?

A. Yes, sir.

Q. And you felt interested in this Noble lying down there at the dock?

A. Yes, sir.

Q. Her bow projected up across Riopelle Street?

A. Yes, sir.

Q. Your office is on which side of Riopelle Street?

A. On the southeast corner.

Q. Southeast corner?

A. Yes.

Q. And Atwater?

A. Yes.

Q. Then it runs down to the river?

A. Yes, sir.

Q. And from your windows I suppose you could look out
363 and see the boat?

A. We are in and out most all of the time.

Q. Running around?

A. Yes, sir.

Q. And to go to the boat how did you go?

A. I believe I walked down the D. U. R. dock.

Q. And that brings you right to the foot of Riopelle does it not?

A. Yes.

Q. Then which way did you walk to get aboard of her?

A. Walked right down and got over the rail.

Q. Jumped over the rail. Did you get your feet wet?

A. No, sir.

Q. You were interested in the way the boat was loaded?

A. Yes, sir,—I was not interested. I noticed she was loaded pretty
heavy.

Q. And that impressed you that way?

A. Yes, sir.

Q. Did you look at her stern to see what she was drawing?

A. No, sir.

Q. Did you look at her bow to see what she was drawing there?

A. No. I may have, but I don't recollect.

Q. It did not make any impression on you?

A. No, sir.

Q. And you went aboard how many times?

A. Two or three times.

Q. Two or three times?

A. Yes, sir.

Q. And that was the last you had to do with the matter until this
afternoon?

A. Yes, sir.

Q. Now this water that was coming up through what you call the
scuppers?

A. Yes, sir.

Q. About what was the shape of that scupper?

A. I don't just remember. It seems to me it was about—about,
well 10 or 12 by 14, something like that.

Q. Something like 10 by 12 or 14? How many were there that
this water was coming through?

A. I think there were two of them.

Q. About two?

A. Yes.

Q. On which side of the boat were they?

A. It was on the starboard side.

Q. On the starboard side?

A. Yes, and some on the port side too.

Q. That the water was coming through?

A. Yes, sir.

Q. So there were more than two the water came through?

A. I believe there was, yes.

Q. Now then positive you know.

A. A man can't remember those things.

364 Q. He can't remember them unless he pays attention.

A. Naturally if he was supposed to be asked——

Q. Why he would pay attention, but you did not pay attention?

A. No.

Q. And you really can not tell us how many scuppers there were on this ship that the water was coming through?

A. I could not tell you whether it was one or two.

Q. Now just describe to me how the water was coming up on the deck.

A. Why the sea washed in on the deck.

Q. The sea from the river?

A. Yes, sir.

Q. And it would break against the sides of the boat?

A. Would wash through the scuppers.

Q. Would wash through the open ports?

A. Yes, sir.

Q. And run up on the decks a ways?

A. Yes, sir.

Q. About how far would it run up?

A. About 4 or 5 feet.

Q. Why do you say 4 or 5 feet?

A. That is as close as I could estimate it.

Q. You saw the hatches?

A. Yes, sir.

Q. Did it come up to the hatch coamings?

A. Yes, sir.

Q. Would it splash against them?

A. Well I don't know whether it did or not.

Q. Did not notice that?

A. No, sir.

Q. How deep would it run over the deck?

A. 2 or 3 inches.

Q. About 2 or 3 inches?

A. Yes, sir.

Q. And it would kind of surge off?

A. Yes, sir.

Q. Like a little wave?

A. Yes, sir.

Q. And then it would be met by a little wave from the other side?

A. I don't know about that.

Q. Well you didn't notice. Was there water coming in on the land side of the boat?

A. Yes, sir.

Q. What were the wave doing in there?

A. They roll through there between the docks.

Q. What would the water do after it came in?

A. Wash off again.

Q. Run off about as quick as it came in?

A. Almost.

Q. Run in and drain off?

A. Yes, sir.

Q. Did you go down to the boat each time to look at that water?

A. No, sir.

Q. How long a time did you spend on the boat each time?

A. I don't know; 10 or 15 minutes.

365 Q. Was it some off time in the shop?

A. Yes, sir.

Q. When you didn't have anything else to do?

A. Yes, sir.

Q. And went down like the average fellow would, to go down and get aboard a boat just for the feeling of it?

A. Yes, sir.

Q. And walked down back again?

A. Yes, sir.

Q. That is all.

By the Court:

Q. Tell me how close to the deck was that opening?

A. That is down to the deck I believe. It may have been an inch or so up.

Q. Was there anything there to close that opening with?

A. Yes, sir.

Q. What?

A. There was a door on the scupper or whatever they call it; I just forget. I don't remember what they do call it. It is a door that works on a hinge.

The Court: There are no more witnesses here on this subject today?

Mr. Hill: Not today, your Honor.

By the Court (continuing):

Q. Now the scuppers on the boat were 9 inches up from the bottom?

A. 9 inches up.

Mr. Laws: I think your Honor is mistaken about that.

Mr. Canfield: The water gates.

The Court: I will take that back. I did not mean that. I mean the thing which you are describing was 9 inches up the water gates. What you described is a water gate?

A. Yes, sir.

Q. And the scupper is a thing that does not have anything to stop it up. Do you know the difference between the two now that I call it to your attention?

A. Yes, sir.

Q. The scupper is a hole right down next to the deck that is not closed at all. It is open all of the while?

A. Yes, sir.

Q. And the water gate on this boat is 9 inches up from the deck, up into the bulwarks. Now having told you that, what do you say about that? Which was it that you saw?

A. It must have been working up through the scupper.
366 It don't seem natural that that gate would be up there 9 inches on the deck.

Q. It was though?

A. It don't seem so.

Q. That is where it was. Now what was it that you saw?

A. As far as I can remember, it was right down on the deck.

Q. There is no question about that or any mistake about it. The water gate, this opening of the size that you describe is 9 inches up into the bulwarks on the side of that boat?

A. I don't believe that.

Q. I wanted to tell you while you were here. I did not ask the other witness because I did not want to do it before you heard it?

A. I don't see what it would be doing up there any way.

Q. Well it was there. There is no question about that. You are mistaken about where it was. Now I want you to tell me what it was that you saw. Was it the scupper down next to the deck, the small opening. That is the water gate which you are talking about. The scupper is a little opening. You have seen them on the boats?

A. Yes, sir.

Q. And you know what I mean by a scupper?

A. Yes, sir.

Q. They are open all the time?

A. It might have been washing through there.

Q. But you are satisfied the water was not coming over through this gate that was 9 inches up from the deck, are you?

A. I believe it could have.

Q. Well, was that the situation?

A. I say it would wash up through both I should judge.

Q. That is all. Before you left the witness stand I wanted to see what you would say.

By Mr. George L. Canfield:

Q. Was it washing up through both, this water that you saw?

A. I believe it was.

Q. What is your testimony in regard to it?

A. I believe I said it was washing through the scupper.

Q. And was it also washing through this hinged—well this opening that you described about 9 by 12?

A. I believe it was, yes.

Q. Was it coming through?

A. Yes.

Q. You are quite sure?

A. Quite certain, yes.

Q. You stood there and saw it come through?

A. I seen the water coming on the deck, yes.

Q. You saw where it came from?

A. I didn't pay any particular attention, no, sir.

Q. Well, was it not an extraordinary thing that you saw,
367 water coming through a port 9 inches above the deck?

A. I seen that at different times, too many times to pay
any attention to it.

Q. You thought it was an ordinary thing?

A. Yes, sir.

Q. You did not pay any particular attention to it?

A. No, sir.

Q. Was there anything unusual about that to attract your at-
tention?

A. Nothing only the way she was loaded, that is all.

Q. Did you look at her draft to see?

A. I don't remember whether I did or not.

Q. You don't remember?

A. No, sir.

Q. You don't remember whether some of this water was coming
through this hinged gate about 12 by 15?

A. I won't say for certain whether that was 9 inches on deck.
I would not say whether it was or not.

Q. It all depends on whether it was coming through, as to whether
it was 9 inches on the deck or not?

A. I can't see what it would be up there for.

Q. You saw the gate?

A. Yes, sir.

Q. And you know how far it was above the deck because you
saw it. How far do you say it was?

A. It was about an inch.

Q. About an inch above the deck. Now it was hinged, was it
not?

A. They are hinged or work on a swivel.

Q. So it would open up?

A. Yes, sir.

Q. And was about how long?

A. I should judge about 12 or 14 inches.

Q. How high?

A. 8 or 10.

Q. There was more than one on the boat?

A. Yes, sir.

Q. How many were there?

A. I don't know.

Q. How many did you notice?

A. I did not notice. I don't suppose there would be over four
or five, something like that.

Q. Were they open or closed?

A. Most generally work themselves.

Q. I am not asking about generally. I am asking you how were those gates at that time?

A. I believe they were open.

Q. How wide open were they?

A. I should judge half way.

Q. How much of an angle did that make? If you can't tell the angle, did they stay open that way all of the time?

A. Yes, sir.

368 Q. What was holding them open?

A. They were left open, I believe.

Q. Did she have any list on her?

A. Not that I noticed, no, sir.

Q. Did you notice whether she had any list or not?

A. No, sir.

Q. Did you notice whether she was loaded by the bow or by the stern?

A. She seemed to be loaded by the stern.

Q. How long did you spend down on the boat?

A. The two or three times I was down there do you mean?

Q. Yes.

A. I might have spent 25 or 30 minutes.

Q. 25 or 30 minutes?

A. Yes, sir.

Q. And all of the time these gates were acting just the same way?

A. Yes, sir.

Q. Open at just the same angle?

A. I presume so, yes; might have been changed a trifle.

Q. And the water was coming in just the same way?

A. It might have been a little different, I can not say.

Q. You can not tell whether it was any different or not?

A. No, sir.

Q. These ports that you saw—these gates which you saw—were just about an inch above the deck?

A. As near as I can remember.

Q. That is all.

The Court: I want to ask Mr. Neusbaumer a question.

HENRY NEUSBAUMER (recalled) for further examination testified as follows:

Examined.

By the Court:

Q. When you were on the witness stand I noticed you must be mistaken about something there. I thought I would wait until the other witness testified. I want to call your attention to the fact, and there is no question on this ship those openings were—in the first place you call what is a water gate, you call it a scupper. That is a water gate, that thing that you describe, as I understand it, the opening right into the bulwarks?

A. It was right close to the deck.

Q. Right in the bulwarks?

A. Yes, sir.

Q. And could be closed with something or could swing open?

A. If I am not mistaken as to the Benjamin Noble, she didn't have no gate in there. I think she was all open there.

Q. Now, how large an opening?

A. I should think about 12 by 14, somewhere in there. I would not say for sure.

Q. There is no opening of that kind at all on the Noble except the water gates; that is 9 inches up from the bottom in the bulwarks; right in the rail. It is 9 inches up from the bottom?

A. Excuse me, but did not the Benjamin Noble just have a piece cut out right close to her decks for a certain distance? Now I would not say for sure. I might be mistaken.

Q. That is a scupper. That is a little hole about 3 inches in diameter. Is that not right? That is about 3 inches in diameter?

A. I could not say. I don't know anything about a boat.

Q. That is a scupper. The other is a water gate. Now, what was it that you saw?

A. This was right close to her deck where the water came in; it was right down on her deck, and the water just rolled up. Her deck was within, I should think, about 3 or 4 inches of the water, the top of her deck.

Q. There is no big opening along down there that you have described?

A. I may be mistaken on that on account of seeing the company's boats that come in there. Of course the company's boats, the company which I work for, all have big openings in there. I might be mistaken on that. I would not swear to it, as to what kind of an opening, but I will swear I saw water coming in on the deck through an opening on the side of her.

Q. Did you notice any scupper now, instead of being a large square opening—

A. I did not notice any other in there, that I noticed. They told me to go down and see how she was loaded. I went down and jumped on her and saw the water coming up on her.

Q. Now that you know the large opening that I tell you about is 9 inches, 9 inches from the deck, did you see any water coming through that?

A. No, sir. All that came in came in close to the deck, and the opening right at the deck. There was none came in up above at all that I seen.

By Mr. Canfield:

Q. It resembled a drain pipe, like an opening or water conductor on a house. Is that what the opening looked like?

A. No, sir. If I am not mistaken it was just cut into her, and into the side of her rail.

Q. It seemed to be a fresh cut?

A. It was made there I suppose when the boat was made.

Q. About how far forward of the engine house was it?

A. It come right close to the engine house, the water did.

Q. I mean this opening?

A. Now, I could not say as to how close it come to that.

Q. A matter of several feet?

A. No, no. It was not very far from it.

Q. And there was just the same kind of an opening on the other side of the boat?

A. On both sides.

Q. And your impression is her decks were, you said, 3 or 4 feet above the water?

A. Yes, sir.

Q. At that point?

A. At that point, yes; that is, her stern end was lower.

Q. Than the bow?

A. Yes.

Q. And at this point near where this hole was you think her decks were 3 or 4 inches above the level of the river?

A. Yes, sir.

Q. And as the waves splashed along there, by passing boats and that sort of thing, it would splash the water up to the opening?

A. Yes, sir.

Q. And it would run up on the deck aways?

A. Yes, sir.

Q. And drain back?

A. Yes, go back.

Q. And that is really the whole story?

A. Yes, sir.

Q. That is all.

Mr. Leckie: I am quite sure the court has an improper idea, and perhaps properly so from the testimony. I suppose we can get the actual facts. Do you want the actual facts?

The Court: You might put on some witness.

Mr. Laws: We will put on Mr. Ross.

CHARLES E. ROSS (recalled) for further examination testified as follows:

Examined:

The scuppers, as shown by the plans, the longitudinal sections, show a scupper and freeing port close together, at the forward end of the poop. Scuppers and freeing ports are arranged along either side of the boat forward. The scupper appears on the plans as it comes down through the strong plate, and then probably goes out through the shear strake below.

The Court: Would it be possible to see through that and see water on the inside?

A. If there was water there, the water would cover that hole, if it was flowing through here.

The Court: How far below decks is the point—does it come out into—

A. It may be a matter of 5 or 6 inches or maybe more than that. The pipe leads from the deck down through and out through the sheer strake.

The Court: And no one on deck could look down through and tell how deep the water was on the side?

A. I think not.

The Court: The waves could not come dashing through that onto the deck?

A. Yes, sir.

The Court: They came against the edge of the boat the water would rise to the level—

A. Any height of water outside, above the deck, would wash through such a scupper.

The Court: How large around are they?

A. I mean about 3 by 5, I imagine would be the practice for that.

Mr. Leckie: Mr. Ross is wrong in one respect. He said it goes down about 5; it goes down a couple of feet.

Mr. Ross: That makes no difference in the result.

The Court: Is Mr. Leckie correct?

Mr. Ross: He may be. There is nothing on the plan to show. The matter of depth would not cut any figure in the water coming through.

Mr. Leckie: The water would stand in the scuppers at the level of the water outside?

A. Yes, sir.

Mr. Leckie: And would go up and down?

A. Yes, sir.

The Court: No one, in still water, could see the water running off the ship as it went out the scupper?

372 A. Yes, your Honor. They would see it receding from the ship, the water on the inside.

The Court: I think some of your witnesses, early in this case, testified to being on the dock and seeing her as she went out and seeing the water running out of the scuppers.

Mr. Hill: No, I think not, your Honor.

Mr. Ross: From the outside they could not see that, your Honor. I say from the outside they could not see that. You mean if they stood on the dock?

The Court: Yes.

A. No, sir, they could not.

The Court: I thought some of the witnesses referred to water running out of the scuppers at the side line somewhere.

Mr. Hill: I don't remember.

The Court: I guess I am in error.

ROBERT BRECKEL, after being duly sworn by the court on behalf of the claimant, testified as follows:

Examined.

By Mr. Laws:

Q. Captain Breckel, where do you live?

A. 596 Northampton Street, Buffalo.

Q. New York. What boat were you on in April, 1914?

A. The Lakeport.

Q. And in what capacity were you on this boat?

A. First mate.

Q. What license did you hold?

A. Pilot's license; first class.

Q. How long have you held a pilot's license?

A. 13 or 14 years.

Q. On what waters have you sailed?

A. The Great Lakes, Buffalo to Chicago and Duluth.

Q. Lake Superior and all the rest of them?

A. Yes, sir.

Q. Just tell us how big a boat the Lakeport is, how she is built?

A. She is a package freight, about 265 feet long, 34 foot beam or

35. I don't know just exactly.

373 Q. And about what does she draw when loaded?

A. Varying depths; down as deep as 17-2 or 3 or 1.

Q. Were you on Lake Superior on the night of the 27th of April, 1914?

A. The 27th of April, yes.

Q. Had you seen the Benjamin Noble within a day or two of that time?

A. We passed her in the Soo River.

Q. What date was it that you passed her there?

A. I think it was the 25th.

Q. The 25th?

A. Yes, sir.

Q. Did she get out before you, or did you get out ahead of her?

A. We unloaded some at the Canadian Soo and went over to the American Soo and unloaded, and proceeded up and locked through, I think it was on the morning of the 26th, and we got on the bottom up there.

Q. You got on the bottom?

A. Yes, sir.

Q. That held you fast?

A. Yes, sir, for about 5 or 6 hours.

The Court: Where?

Mr. Laws: At the Soo.

A. Just above.

Q. The Benjamin Noble came through and went out to sea?

A. I don't know. I did not see her.

Q. You did not see her again?

A. No, sir, we were busy.

The Court:

Q. Did you pass her below the locks?

A. Yes, sir, in the lower Soo River.

By Mr. Laws (continuing) :

Q. Had you seen her in the lower Soo River?

A. Yes, sir, we were right alongside of her.

Q. Did you notice anything peculiar about her at that time, anything unusual?

A. Only that she was loaded; it looked to me as though she was loaded deep.

Q. Now on the night of the 27th of April, 1914, where was your boat at that time, what vicinity?

A. The night of the 27th?

Q. Yes, the 27th?

A. We must have been in the vicinity of Devil Island.

Q. Did you see any other boats—what time did you pass Devil Island?

A. Before midnight; before I came on watch; somewhere in the neighborhood of 5 minutes to 12.

374 Q. What time did you come on watch?

A. About 15 or 20 minutes past twelve.

Q. And they had passed it about 5 minutes to 12?

A. Yes, sir.

Q. Were there any other boats in the neighborhood at that time?

A. There was a steamer ahead of us that the captain or the second mate told me was probably the Morrell. He was about a mile ahead of us or two miles.

Q. He was about a mile or 2 miles ahead of you?

A. Yes, sir.

Q. Was she making faster time than you were or slower?

A. She was making faster time than we were.

Q. How were you loaded. What was your capacity?

A. At that time we had 2,100 tons.

Q. 2,100 tons?

A. Yes, about that.

Q. About 2,100 tons. Was that a full load or a partial load?

A. Partial.

Q. What is your full capacity?

A. I think we had 2,560 tons on when we left Alpena.

Q. And that would load you?

A. Yes, sir.

Q. How far is Devil Island from Duluth?

A. About 68 miles.

Q. You were on the bridge then from then on until—from what time on?

A. From about 20 minutes past twelve up to, I think until a quarter of six. The captain came up and relieved me a little bit earlier because we were going to make the dock and land about breakfast time, and he thought we would have breakfast a little sooner. He came up and relieved me about that time.

Q. And you reached Duluth the morning of the 28th of April about what time?

A. Between 6—about 6:20 or 6:25.

Q. Now during the night time, after you came on watch, tell us whether you saw the Noble again?

A. Well, I don't know whether it was the Noble. We seen a steamer apparently 5 or 6 miles ahead of us, something like that. I could not say. It might have been less or more. I said to the wheelsman there is a fellow coming out. We could pick up his head and stern lights, the *the* range lights as we call them, but I could not see his side lights. He bore down on us and worked to the northward; that would leave him on our starboard bow. I said to the wheelsman leave him to starboard, like that. When he got within about 3 or 4 miles of us he seemed to slew around; he went around quickly
375 as though he was going to turn around and follow, as it looked to me, the Morrell back into Duluth. You see he passed the Morrell, or the boat ahead of us. He was going around that way. When he got about that far around, out went his lights, just as if his dynamo or something let go. They went out quick, and that is the last we seen of him.

Q. About how far away from your boat was it that this boat was when he started to turn around apparently and his lights went out?

A. About 3 or 4 miles.

Q. About what bearing, how did it bear from your boat?

A. About half or three-quarters of a point on our starboard bow.

The Court: Will you get his course?

By Mr. Laws (continuing):

Q. What was your course at that time?

A. About S. E. by W. half W.

Q. About S. W. by W. half W.?

A. Yes, sir.

Q. And when this boat apparently went over or the lights went out, about what course was she headed?

A. Somewheres about N. or N. by E.

Q. How could you tell that fact?

A. Well, the way our course was; we were steering S. W. by W. He was pretty N. or N. by E. or a little bit better.

The Court: You were going for Duluth?

A. Yes, sir.

By Mr. Laws (continuing):

Q. How was the wind blowing and from what direction?

A. Northeast.

Q. How would that bring this boat that is supposed to be the Noble with respect to the sea; would she be heading to the sea or broadside or how?

A. I would think -he would be right in the trough of the sea, the way the lights went.

Q. Will you just take this piece of paper and tell us and just make a mark which you would indicate would be about Devil Island, to give us some idea. Make something for Devil Island to start with,

anywhere you please. (Witness takes paper and indicates Devil's Island.)

A. Here is Duluth, do you see; about here would be Devil's Island (indicating).

The Court: Put Superior on there so we will have some idea on it.

A. There is Superior (indicating on paper).

The Court: Now Two Harbors?

A. Two Harbors would be a short distance.

376 The Court: All right. Now you have got to put Devil's Island further down?

A. Yes, I suppose.

By Mr. Laws (continuing):

Q. Fix some place for Devil's Island, about in the relative position?

A. About there (indicating). The course would be pretty nearly straight.

Q. When you first saw the Noble, fix the position of your boat when you first saw the Noble?

A. We were not quite up to Two Harbors, of course I don't know just how the line would be.

Q. This would be my boat—this is the Lakeport?

A. Yes, sir.

Mr. Leekie: Would it not be just as well to let the witness do this?

Q. Put that about where the Noble was when you first saw her?

A. This is where I saw her (indicating on paper). This is about where the Noble would be. Of course the distance, I can't make it.

Q. Just the relative position?

A. Yes, sir. This is when I first seen him (showing). He probably would be over this way a little bit, a little bit that way when I first seen him, over this way to port of us, and he was working in this direction, do you see, over that way (indicating).

The Court: Have you fixed that?

Mr. Leekie: Indicating to the northward.

The Court: Have you got his boat with reference to Duluth, having Duluth in mind?

A. He was evidently coming out this way, as near as I could make him. Of course this is only a rough sketch. Of course he was crossing up, crossing in that position (indicating). Do you see? Of course we ought to have that down further, up like that. You see he would be heading like that when he let go.

Mr. Leekie: Heading off more to the north shore?

A. Yes, sir, toward Two Harbors. I have not got just the distances. Do you see? He was in here when I first picked him up, do you see (indicating)? That would be about 5 or 6 miles when he let go. When his lights went out he was 3 or 4 miles, I should judge, in here (indicating).

377 By Mr. Laws (continuing) :

Q. Let me get the record so it will read intelligently. When you saw the Noble, he was apparently coming towards you, bearing toward you on your port bow?

A. Yes, sir.

Q. And he came still towards you crossing your bow?

A. Yes, sir.

Q. And when he had gotten to a point—how far on your starboard bow?

A. About half or three-quarters of a point.

Q. About half or three-quarters of a point on your starboard bow, he apparently tried to turn around?

A. Yes, sir.

The Court: Which way?

By Mr. Laws (continuing) :

Q. Which way?

A. Starboard. He was working towards the northward.

Q. Which way was he apparently turning?

A. With a starboard wheel.

Q. With a starboard wheel?

A. Yes, sir.

Q. And he would go to port with a starboard wheel?

A. Yes, sir.

Q. And as you were watching him do that his lights went out?

A. The lights went out.

Q. And you never saw anything of him again?

A. Never seen him any more.

The Court: In your judgment was he abreast, to the eastward or westward of Two Harbors?

A. He was to the westward of Two Harbors.

Q. How far to the westward in your judgment of abreast of Two Harbors?

A. I should judge about 2 or 3 miles.

Q. How far would you think, as near as you can estimate it, from Two Harbors or from the north shore?

A. About 5 or 6 miles.

Mr. Laws: If your Honor please, can we get this, rub out some of the lines so as to get the relative positions, and make a boat there and a boat there; rub out the lines?

Mr. Leckie: No. I think the court wants it as it is.

The Court: That is all right I guess.

378 By Mr. Laws (continuing) :

Q. What time was this that you saw the Noble's lights disappear?

A. About 4:15 A. M.

Q. On the morning of the 27th of April?

A. On the morning of the 28th.

Q. The mornings of the 28th. I see. How was the weather at that time, Captain?

A. About that time it was kind of misty with a little snow and sometimes a little rain. We could see five or six miles all of the time.

Q. How was the wind?

A. Northeast and blowing fresh.

Q. And how hard would you think it would be blowing according to your judgment?

A. Somewheres around 35 or 40 miles.

Q. Somewheres around 35 or 40 miles?

A. Yes, sir.

Q. And what kind of a sea was running?

A. The sea was after us, and I didn't notice very much sea at that time.

Q. Was it bothering your boat at that time?

A. No, sir.

Q. Did you ship any water?

A. No, sir.

Q. Have you met worse weather in April on Lake Superior than that weather was?

A. Why, I don't know whether just on Lake Superior or not, but I have met lots worse weather.

Q. On the lakes?

A. Yes, sir.

Q. In making Duluth did you have any trouble with your boat to make Duluth?

A. No, sir.

Q. You arrived there about 6——

A. 20 or 25.

Q. On the morning of the 28th?

A. Yes, sir.

Q. After that time did the weather get worse?

A. Yes, sir.

Q. How was it that day of the 28th?

A. It was blowing a gale.

Q. Blowing a gale all day the 28th?

A. Yes, sir.

Cross-examination.

By Mr. Leckie:

Q. The Syracuse is one, isn't she one of the old western line boats?

A. Yes, sir.

Q. And she is what you lake men know as a propeller type, is she not?

A. Yes, sir.

Q. They are built for package freight?

A. Yes, sir.

Q. Double decker?

A. Pardon me. This is not the Syracuse. It is the old Boston.

379 Q. It is the same general type?

A. Yes, sir.

Q. The propeller type?

A. Yes, sir.

Q. They are double deck?

A. Yes, sir.

Q. Was this load you stopped at the Soo and unloaded a part of it?

A. Yes, sir.

Q. And unloaded some more at the American Soo?

A. Yes, sir.

Q. And the place you passed the Noble was somewhere down below the Soo in the Soo River?

A. Yes, sir.

Q. Whereabouts?

A. Around Lime Island.

Q. Lime Island?

A. Yes, sir, between there and Round Island, somewhere.

Q. It is broad water down there?

A. Yes, sir, lots of water.

Q. Were you ever in a single decked boat of that type?

A. Yes, sir, I think I was. Yes, I was on the Edward Smith.

Q. She is a wooden boat?

A. Yes, sir.

Q. As a matter of fact, they load all of the single decked boats deep, don't they?

A. At that time lumber and salt is about all we carried, probably a little coal. I was not in her long.

Q. Boats of the type of the Spalding, the Noble and the Beattie, they load deep. You have seen them that way?

A. Yes, sir, mostly.

Q. Now when you got on Lake Superior with your boat—by the way, you did not see any more of the Noble until you got up—

A. I could not swear that was the Noble we saw.

Q. You did not see anything more of her around the Soo?

A. No, sir.

Q. When you got up on Lake Superior and got towards the west end of the lake there, you were in about the best trim your boat could be for weather?

A. Yes, sir.

Q. You were in what is described as the ideal condition?

A. That is it.

Q. You were running right ahead of this gale of wind?

A. Yes, sir.

Q. Had it right after you as you call it?

A. Yes, sir.

Q. And you would not notice that anything like you would going head into it?

A. No, sir.

Q. You say there were snow squalls at times?

A. Yes, sir.

Q. Sort of misty?

A. Yes, sir.

380 Q. And rainy?

A. Yes, sir.

Q. Sleet? Was there some sleet?

A. No, half rain and half snow.

Q. That is what you ordinarily term sleet?

A. Yes, sir.

Q. When you got down towards Duluth you made the gap just about right, did you?

A. I was not up there then; the captain was on the bridge at that time.

Q. If you are fortunate enough to get the ranges just right, so you don't have to change and shape your course, you can go sailing in with the wind after you, and you don't pay very much attention to it?

A. No, sir.

Q. After you got inside you tied up somewhere?

A. At Cutler's dock.

Q. After you got in there you noticed it was quite a gale of wind?

A. Yes, sir.

Q. If a boat had gotten down to Duluth before daylight in the morning, and it was then snow squalls, they could not pick up the lights to get in, about all there would be left for him would be to try to turn around and stand back up the lake, wouldn't it?

A. That would be my judgment.

Q. And if he did back up the lake for a while, and it was apparently clear, with less snow squalls, and he saw some more of you going in to Duluth, he would be apt to turn around and start for Duluth with you?

A. Yes, sir.

Q. You would not criticise that navigation in any way, would you?

A. No, sir.

Q. Now in regard to the lights disappearing. The head light of a boat is so arranged to show only two points abaft the beam, is it not?

A. Yes, sir.

Q. And at the time you described this man's lights as disappearing, he would be about in the right shape, for his head light to disappear to you anyway?

A. Not exactly, no, sir.

Q. He was off your starboard bow?

A. Yes, sir, about a half or three quarters of a point.

Q. About half or three quarters of a point?

A. Yes, sir.

Q. And four or five miles away, would you say?

A. No, not at that time.

Q. 3 or 4?

A. 3 or 4.

Q. If he was turned up enough toward the north shore—you say he was turned up to Two Harbors at that time—to shut off his head

light and side light, the only light that could be possibly remaining for you to see would be his stern range, if he had one?

A. Yes, sir.

Q. You can not definitely say—it is possible a snow squall might have set in between you and him and closed out his lights?

A. No, sir.

Q. Might have been closed off by a snow squall?

A. I can not say that.

Q. All you can — at that particular time is that the lights became invisible to you?

A. Like that (snapping fingers).

Q. Just as quick as can be?

A. Yes, sir.

Q. After you got inside, did you know before you left there anything about the Noble being lost?

A. I think we were lying at the Great Northern dock, loading or unloading, when some of the stevedores told me the Noble is gone.

Q. Did you report what you had seen or heard to the local inspectors?

A. No, sir.

Q. Did you make any report of it to the authorities at all?

A. I only told the captain when I called him.

Q. Do you know whether the captain made any report of it to the authorities?

A. I do not.

Q. You have said you met worse weather at that time of the year. I suppose that the times you met worse weather you were either heading into it or had to go across ways or up into the through of the sea or something of that sort?

A. Yes, sir.

Q. That would be a good deal more noticeable to you under those circumstances?

A. Yes, sir.

Q. After you say these lights disappear, did you yourself haul over that way or make any attempt to render any assistance?

A. We let her drop back on her course as close as I thought we dared go to these lights; I let her go and kept a good lookout and could not see a thing.

Q. And you just dropped back on your course?

A. Yes, sir.

Q. The regular course for Duluth?

A. Yes, sir. It was only for probably about a quarter, to keep him on that side of me.

Q. You kept right on your course for Duluth then?

A. Yes, sir.

Q. That is all.

By the Court:

Q. As you got in toward Duluth, was this sea any heavier?

382 A. It was getting a little heavier I guess all the time.

Q. Where was it that you picked up this storm?

A. It started down near Eagle Harbor; starting northeast light with rain. That is quite a ways down the lake.

Q. And did it gradually increase?

A. Gradually, yes, sir.

Q. Was there any drop-ing off or was it just a gradual increase at that time until you got into Duluth?

A. Yes, sir, kept on increasing, but not enough so we noticed it. We went right along making our time all the way up.

Q. Did you run into any snow or rain enough to prevent your seeing to get in at Duluth?

A. No, sir.

Q. At any time?

A. No, sir.

Q. What light was this boat showing you at the time they went out and you lost them?

A. The Noble, what apparently was the Noble?

Q. Yes.

A. I could see both lights ahead and range lights.

Q. At any time did you see her colored lights?

A. No, sir.

Q. How close would you expect to be to see those lights?

A. The red and green?

Q. Yes.

A. If they are burning at all you ought to see them at 8 or 10 miles.

Q. You were never able to see these at any time?

A. No, sir.

Q. Was there anything about the weather now, the snow or rain, that would explain that. What I was wondering is why you did not. Can you explain that to me? as to why you did not, was not able to see the lights?

A. No, sir, I can not.

Q. Does it happen that you get squalls and can't pick them up?

A. Yes, sir, sometimes very much.

Q. You would not want me to get the idea then that her red and green were not burning?

A. Well I can't say.

Q. What is the fact—what conclusion would you draw from that. If for some reason you could not see them? would you think they were not burning?

A. I think they probably were not burning or something, down low; he would be probably deep in the water, down low, but his range light and head light, I could see them easy.

Q. Wouldn't you think they were probably burning but for some reason of that kind you could not see them?

383 A. Yes, sir, that might be. You see the wind was aft of us, and probably our smoke or something had struck him.

Q. I was wondering which conclusion I ought to reach from that. What time did you say you came on watch? at 12?

A. 12:15 or 20.

Q. How long before the captain left?

A. About half an hour.

Q. Did you call him at any time before breakfast?

A. Yes, sir.

Q. What time?

A. I think it was about 20 minues past 5.

Q. I mean before that, from the time he left now during your watch, did you call him?

A. No, sir.

Q. What was your rule and custom in regard to weather. If you got into a bad storm wouldn't you call the captain?

A. Yes, sir, I would, if it was very bad. I would ask him whether I should haul her up.

Q. If you got into a bad storm?

A. Yes, sir.

Q. You would call the captain?

A. Yes, sir, or he is generally up himself; that is the rule.

Q. If you got——

A. He would be up himself all the time.

Q. Was there not anything that night in that storm out there so you thought of calling him?

A. No, sir, not with our boat.

Q. What about was the velocity of the wind in your judgment?

A. Well between 35 and 40 miles an hour, that is the velocity; that is as near as I can judge.

Q. What about the sea. Is there any way you can tell me about that sea? how heavy it was?

A. No, sir, I can't tell.

Q. Any way you can describe it?

A. No, sir. The wind was right after us, and the wind and sea kind of helped us along.

Q. I suppose you have seen the seas breaking in there on those piers at the Duluth entrance?

A. Yes, sir.

Q. At the lighthouse, a good many times?

A. Yes, lots of times.

Q. Did you notice it that morning as you came in?

A. I just happened to be in to breakfast; he was half ways in when I got out.

Q. And you didn't notice?

A. No, sir, I didn't pay very much attention.

Q. What storms have you ever seen in there that was as bad as this?

A. Well, I can not say. I can not give any date or data regarding that at all.

Q. Are you sure you have seen storms?

A. Oh, yes. We came down in one, a northeaster, shortly after that; I think it was either the 7th or 27th of June. But that one, she was not deep, we only had about 1000 tons or 800, something like that. We lost 14 hours on Lake Superior.

Q. Do you think that was a worse storm than this one?

A. In my estimation it was. We felt it more. We were heading into it.

Q. Now about the storm on the 28th, the next day after you got in there?

A. That is the morning we got in. It blowed pretty hard through the day after we got in.

By Mr. Leckie:

Q. The propeller type of boats, like your boat was, is about the best type of sea boat we have had on the lakes?

A. Apparently I guess they are.

Q. And the time that you say, the northeaster that you felt, you say you were headed into it, and it was more noticeable to you then?

A. Yes, sir.

Q. Was your boat pretty well out of the water, like she was on this occasion, her hull practically would act like a sail?

A. Pretty much.

Q. And you went moving along ahead of it. Now this disappearance of lights. As I understand you, it was a quick process?

A. Yes, sir, it seemed——

Q. Do you know what the term is broaching to?

A. It is if he took a roll, and let go like that; just one slip, is all we could see.

Q. At that time he did not come more towards you, but all at once he dropped right off in the trough of the sea?

A. Yes, sir.

Q. As if something had let go?

A. No, just the electric lights. He looked to be working around to the northward, working back into Duluth. That is what we thought.

Q. And all at once he just acted as if she dropped into the trough of the sea and something had gone wrong?

A. Yes, sir.

Q. And the lights went out like that, as though the dynamo had suddenly gone out?

A. Yes, sir.

Q. That is all.

By the Court:

Q. Did you see any other boats but this one the captain pointed out to you that was away ahead of you——

385 Mr. Laws: That was the Morrell.

A. The Morrell.

The Court: Did you see any other boat than this boat you told us about and the Morrell?

A. No, sir.

Q. All the rest of your watch that night you did not see any boats. Had you seen any from Eagle Harbor down there?

A. Oh, yes. We met a few of them.

Q. And had you seen any in distress?

A. No, sir.

Q. Tell me what boats you saw, if you can remember, from Eagle Harbor?

A. I can't remember.

Q. You would not be on watch?

A. Just a part of the time, that is all. We might go that stretch and not see anything.

Q. That is all.

NEIL MCLEOD, after being duly sworn by the court on behalf of the claimant, testified as follows:

Examined.

By Mr. Laws:

Q. Mr. McLeod, what is your business?

A. Wheeling and watching on steamboats.

Q. You are a water man on the lakes, are you?

A. Yes, sir.

Q. A sailor man?

A. Yes, sir.

Q. Do you hold any licenses?

A. No, sir.

Q. And how long have you been sailing on the lakes?

A. Oh, probably 10 years.

Q. About 10 years?

A. Yes, sir.

Q. About how old are you?

A. 37.

Q. Were you on the steamer Lakeport on the night of April 27th, 1914, when you were bound in for Duluth?

A. Yes, sir.

Q. Had you seen the Noble before, within a few days before that time?

A. I noticed her down in the Soo River there.

Q. Did you notice anything unusual about her?

A. I didn't pay particular attention to her—I saw she was loaded pretty well. I could not say she was exactly over loaded or anything.

Q. When you got down that night of the 27th—what time did you go on watch?

A. About 12:20.

Q. Did you go on watch the same time Captain Breckel came on?

A. Yes, sir.

386 Q. Where was your boat at that time with respect to Devil's Island would you say?

A. Probably about a mile or mile and a half from Devil's Island.

Q. Toward Duluth?

A. Yes, sir.

Q. Were there any other boats near you at that time?

A. Why there was the Steamer Morrell; that is the only one I saw.

Q. How was she bearing from you, the steamer Morrell?

A. She was right ahead of us on the same course, headed for Duluth.

Q. How far away from you was she?

A. She probably may have been a mile and a half or something like that; I could not say.

Q. Now, later on in the night did you see any other boats than the Morrell?

A. Well, I don't know. I see this boat coming out.

Q. You saw a boat coming out?

A. Yes, sir.

Q. About what time was it that you saw this boat coming out?

A. Well, it probably would be about 3:30 or 3:45 something like that when I first picked up the lights.

Q. In the morning?

A. Yes, sir.

Q. How far off was this when you first saw her, would you judge?

A. A half a point on our port bow when I first saw her.

Q. How many miles was she off?

A. About 5 miles.

Q. Which direction did she seem to be bearing?

A. She seemed to be bound down the lake.

Q. Bound up—

A. Down the lake; coming up from Duluth.

Q. Tell us what the movement of that boat was after that time and what happened?

A. After we seen her I could see her lights, and I watched her all of the time. I seen her when she started to come across our bows, and the mate seen her. He said you had better leave the fellow to starboard. We let her work off her course a little, probably a quarter of a point or something like that. We seen this boat when she came across on our starboard bow, and he seemed to be headed up for the north shore when I seen him there. He seemed to be three-quarters of a point on our starboard bow.

Q. What happened then?

A. I was looking at him, and all of a sudden his lights disappeared. They went out.

Q. And at that time what if anything did he appear to be doing then?

387 A. I could not say. But he had been coming around as if probably he was trying to turn around to go back, or headed for the north shore or something. It seemed that way to me.

Q. And in the position that he was in, would you judge that he was in the trough of the sea or headed into the wind or how?

A. From the position he was in when I last saw his lights, he was in the trough of the sea.

Q. He was in the trough of the sea?

A. Yes, sir.

Q. What time was this when you saw his lights go out as near as you can fix it?

A. About 4:15.

Q. Where was the captain at that time?

A. I don't know I am sure.

Q. He was not on the bridge, was he?

A. No, not at that time I didn't see him.

Q. How long before that time had he been on the bridge?

A. I hadn't seen him from the time I came up on watch.

Q. How was the weather at that time?

A. There was quite a wind blowing.

Q. How hard about would you think it was blowing?

A. Well, in the pilot house where I was, I would probably judge 40 miles or something like that.

Q. 40 miles or something like that?

A. Yes, sir.

Q. Did it roll your boat any?

A. No, sir.

Q. Did you have trouble steering her?

A. No, sir.

Q. Did you think it necessary to call the captain or anything of the kind?

A. No, sir.

Q. How was the sea at that time?

A. There was quite a sea running but it was not extra high. It was not running hard enough to bother the boat I was on any.

Q. Were you shipping any water over your stern?

A. No, sir.

Q. Have you been out on Lake Superior before in storms?

A. Yes, sir.

Q. And on the other great lakes?

A. Yes, sir.

Q. Have you been in worse storms than this one?

A. I have been in worse storms, yes.

Q. A good many of them?

A. Not a good many; I have been in a couple of them.

Q. How long did you remain *in* watch before you went down?

A. I was relieved at 6:10 or 6:15 I guess.

Q. 6:10 or 6:15?

A. Yes, sir.

Q. Who relieved you, the mate?

A. The other wheelsman relieved me.

388 Q. The other wheelsman relieved you?

A. Yes, sir.

Q. About how far away from you would you judge this boat was when his lights went out, about how far away?

A. Probably would be a mile and a half or two miles, that is, in towards the north shore.

Q. In towards the north shore?

A. Yes, sir.

Cross-examination.

By Mr. Leckie:

Q. Do you remember what course you were steering?

A. Yes, sir.

Q. What was it?

A. S. W. by W. half W.

Q. And when you starboarded that would be a quarter further southward?

A. Yes, sir.

Q. And that was the course you were on at the time he disappeared?

A. Yes, sir.

Q. About how far would you judge you were still to the eastward of Two Harbors?

A. I could not tell very well. I didn't see Two Harbors because I was in the pilot house.

Q. The sea and wind was about directly northeast, would you say?

A. Yes, sir.

Q. At the time this boat disappeared, you would say she was about squarely in the trough of the sea?

A. Yes, sir, she appeared that way to me.

Q. That would be putting her head up somewhere northwest?

A. Somewhere about there, yes.

Q. And at that time, you would say, three-quarters of a point on your starboard bow?

A. Yes, sir.

Q. 40 miles an hour. You would say that was about the average along there?

A. That is about the way it appeared to me in there.

Q. Did you notice whether or not it was sort of puffy, a little harder at times, and letting up a little bit?

A. No, sir.

Q. It seemed to be about a steady wind all the time?

A. Yes, sir.

Q. And continued about the same rate without any let up or increasing?

A. I could not say. I didn't pay very much attention. I was not outside where I could see or feel or have any idea. I knew it was blowing pretty hard. I didn't notice whether it was flattening down or increasing.

Q. You steered inside, I suppose?

A. Yes, sir.

Q. So then, inside of the pilot house, with the protection, you still judge it was blowing at least 40 miles an hour outside?

A. Probably about that.

389 Q. You knew of course you were going with the wind, did you not?

A. Yes, sir.

Q. That is all.

By the Court:

Q. From the time that you started in that storm until you got

in, did you know of any change being made in your speed or your course on account of the storm?

A. No, sir.

Q. You took the regular course across?

A. Yes, sir.

Q. Did you notice the waves in there on the pier?

A. No, sir. I was not on deck when she went in there.

Q. There was no record made of this, the seeing of the lights or anything in your log, so far as you know?

A. They put it in the log book, that is at the time the lights disappeared. We had it in the log book at that time.

Q. Did you make an entry at that time?

A. Yes, sir.

Q. It was entered on the log book at that time?

A. Yes, sir.

Q. Did you and the mate talk about it at that time?

A. Why after the lights went out I said to him, I guess that fellow's dynamo must have gone out. He said probably they are out. He said we ought to be able to see something of him. Just then the captain came up. I seen the captain, both of them standing there. That is the last I seen or anything. I didn't say anything more about it. I never seen anything of her afterwards.

Q. What time did the captain come on?

A. Somewhere around 4:15 or something like that, just shortly after the lights disappeared; probably 5 minutes or 10 minutes.

Q. Are you sure about that?

A. It seemed about that time. I could not swear to it because I didn't notice it. I seen him standing down there. I could not say.

Q. Who called him?

A. I don't know I am sure.

Q. How?

A. I don't know.

Q. How long was he out there after that?

A. I could not say, to make sure.

Q. Did he stay up from that time on until you got into Duluth?

A. I don't remember whether he was there all the time until we got in or not. I could not just say.

Q. Was he called at any time?

A. Not to my knowledge.

390 Q. Do you know whether he was called before you—when you were entering Duluth?

A. I don't know I am sure. I don't know anything about that, whether he was called or got up of his own accord.

Then adjourned to 9:30 next day.

Saturday, February 20, 1915—9:30 a. m.

Court convened pursuant to adjournment. Parties present as before.

HARRY JONES, after being duly sworn on behalf of the respondent, testified as follows:

Examined.

By Mr. Leckie:

Q. What is your occupation?

A. Master of steam vessels.

Q. Have you ever been master of the single decked type of boats?

A. Yes, sir.

Q. Did you know Capt. John Isenhart, who was lost on the Steamer Noble?

A. Yes, sir.

Q. What was your experience with him; had he ever served with you, and if so in what capacity? Tell us what you know about him as a seafaring man?

A. He served as mate with me for two years, and he watched and wheeled for me when I was mate of vessels.

Q. How long has your acquaintance with him extended, over what part of his seafaring life, would you say?

A. Since 1898.

Q. In the boats that he was mate with you, were they of the single decked type?

A. One of them was.

Q. Further back than that, do you know the boats he has been in that were of a single decked type?

A. Not prior to 1898.

Q. Subsequent to that and before he was mate with you in the single decked boat and sailed with you, had he been with anybody else in other single decked boats that you know of?

A. No, sir; not other than with me.

Q. Do you know that for a considerable time he was in the Steamer Lindsay?

A. Yes, that was with me.

Q. She was also a single decked boat?

A. Yes, sir.

391 Q. During the time of Capt. Eisenhart's sailing, had he been in boats carrying steel *rcals*?

A. Yes, sir.

Q. Now, from your acquaintance and experience with him as a seafaring man and navigator, what would you say about his ability and judgment as a competent navigator?

A. I always considered it excellent.

Q. What was his general character in reference to the position of first officer or master of a ship?

A. He was always very attentive to business, and never took any unnecessary chance; always looked after the boat's affairs in good shape.

Q. What about his personal habits?

A. His habits were excellent; he hadn't any bad habits at all.

Q. A drinking man at all?

A. Never drank.

Cross-examination.

By Mr. Laws:

Q. Captain, you say Capt. Eisenhart was in the Lindsay with you?

A. Yes, sir.

Q. Was that the only single decked boat you know of he was in?

A. No, sir; he was in the Dalton and the A. G. Davidson with me also, single decked.

Q. When was he in the Dalton?

A. In 1910.

Q. And how big a boat is she?

A. She is a canal size steamer.

Q. What do you mean by that, as to length?

A. Well, 225 feet.

Q. What was the next boat he was in?

A. The A. G. Davidson.

Q. How big a boat was she?

A. Of the canal boat, 225 feet.

Q. Were those boats wood or steel?

A. They were both steel.

Q. What were the other boats you have mentioned?

A. Those were the only single decked boats.

Q. He was mate with you and you were the master of her?

A. Yes, sir.

Q. What position did he occupy?

A. First officer.

By the Court:

Q. Did I understand he was in the Lindsay with you?

A. Yes, sir.

Q. What kind of a boat was that?

A. She was a wooden steamer about 185 feet long.

Q. When was he in the Lindsay with you?

A. In 1909, 1910 and 1911.

Q. I understood you to say in 1910 you were in the Dalton?

392 A. No, it was 1899, 1900 and 1901 he was with me in the Lindsay.

Q. Then, after that did you and he separate?

A. Yes, sir.

Q. He was first mate with you all that while?

A. No, sir, he was watching and wheeling.

Q. You stayed on in the Lindsay when he left?

A. Yes, I stayed on.

Q. And what boat did he go with then, do you know?

A. He was with the Alfred Mitchell for quite a period, and he was in the Calumet.

Q. Did he get a position as second mate then?

A. Yes, he was second mate in the Mitchell and then he went in the Calumet.

Q. He had an advance. What was he in the Calumet?

A. I don't know that.

Q. And the next boat, do you know that?

A. He was mate on the Adam Cornelius one season and the Nottingham.

Q. What kind of boats were those?

A. Those were double boats, large boats.

Q. Then, do you know what boat after that?

A. Well, it was shortly after that he came with me again as officer.

Q. In which boat first?

A. In the Dalton.

Q. In the Dalton in 1910 as first mate?

A. No, he was second mate in the Dalton.

Q. How long did he stay with you in the Dalton as second mate?

A. I don't think it was over 6 weeks.

Q. Then what?

A. Then he came with me in the Davidson and stayed the entire season.

Q. You left the Dalton after he had been back with you 6 weeks?

A. Yes, sir.

Q. And you went over in the Davidson?

A. Yes, sir.

Q. And then he was first officer?

A. Yes, sir.

Q. And that was during the season of 1910 that you went to the Davidson?

A. No it was 1912 that I went in the Davidson.

Q. I don't just see how it is. I understood he came with you in the Dalton in 1910?

A. Yes, sir.

Q. And I understood you to say he only stayed about 6 weeks?

A. That was all.

Q. And you stayed on. Just tell me how that was.

A. He came there as second officer and made a trip or two, and he thought he could better his condition, looking for a first officer's berth, and he got off.

393 Q. Where did he go?

A. He went in the John J. MacWilliam if I recollect, and he stayed there a season.

Q. What kind of a boat was the MacWilliam?

A. She is of the large type.

Q. Do you know any other boat he has been in when he went away from you?

A. He was mate with me prior to going in the Noble—of the Steamer Merida; he was mate with me the entire season of 1912 and 1913.

Q. Was he not with you in the Davidson in that year? After he was with you in the Dalton, the next time he was with you he was in the Davidson?

A. Yes, sir.

Q. And *what* was in 1912?

A. Yes, sir.

Q. And how long did he stay with you there?

A. The entire season.

Q. What did you carry on the Dalton when he was with you? Do you remember; I think that was the time he was with you only a couple of trips?

A. Principally coal and grain in the Dalton.

Q. Have you traded in iron ore when he was with you in the Davidson or what did you trade in?

A. Coal and grain.

Q. You didn't carry any iron then or rails on those 2 boats?

A. We carried iron on the Dalton.

Q. While he was with you?

A. Well, now I couldn't say whether we had iron while he was there or not.

Q. In the Dalton how heavy a load did you carry, how much of a cargo?

A. Well, 2800 net tons in her.

Q. Of what?

A. Steel rails.

Q. Anything else? Did you carry as much as that?

A. Iron ore.

Q. You carried as much as that of iron ore?

A. Yes, sir.

Q. Was that your maximum load?

A. Yes, sir.

Q. How deep down did that put the Dalton?

A. Well, about 17 forward and 18 aft.

Q. How much freeboard would that give on the Dalton?

A. Well, about 4 inches.

Q. Well now did you carry 2800 regularly, always? when you carried iron ore or rails?

A. Well, it varied with iron ore always.

Q. To what extent did that vary?

A. As near as I can recollect, from 100 to 200 tons.

Q. Was that varying done to suit the convenience of the amount they had to move or because of the season of the year; what made the variation?

394 A. Well, it would be according to the amount on hand; sometimes the railroad weights are not always the same. The vessel would be at a certain draft, and not have the same amount of cargo on.

Q. Then the season of the year would not have anything to do with it?

A. No.

Q. You loaded just as heavy in the fall as you did in the summer?

A. No, we always loaded lighter in the fall.

Q. I understood you to say the season did not have anything to do with the load?

A. Well it does with me.

Q. Then you misspoke yourself about that?

A. Yes, sir.

Q. Does that explain the fact that sometimes you had 2800 net tons on the Dalton, and sometimes you had less?

A. No, not always.

Q. Now, the 2800, would that be as much as you would put on in the best weather, the summer season?

A. Yes, sir.

Q. How much lighter would you load her in the fall?

A. Oh, a couple hundred tons.

Q. How about the spring of the year, the first trip in April?

A. We never looked for any heavy weather in the spring.

Q. You would load her just the same then?

A. Yes, sir; just the same as in the summer time.

Q. Just as heavy the first trip in April as you would in the summer?

A. Yes, sir; it has always been customary.

Q. Then you would say in the late fall you would load about 200 tons lighter, would you?

A. Yes, sir.

Q. How much less would a hundred tons make her draft; how much would that let her out of the water?

A. A hundred tons would possibly let her out 3 inches.

Q. You mean a mean of 3 inches?

A. Between 2 and 3 inches, yes, sir.

Q. That would make her have about how much freeboard, would you think?

A. Oh, about 6 or 7 inches.

Q. 6 or 7 inches, if you had 2700 tons on?

A. Yes, sir.

Q. Then, if you take it 150 tons less, say 2650 tons, what would her draft be?

A. About 16-6 and 17-6.

Q. You are giving me a mean draft?

A. Yes, sir.

Q. How would that leave her freeboard?

A. About 8 inches, 8 or 9 inches.

395 Q. Then to fetch it down to 200 and make the load 2,600 net tons, what draft do you think she would have?

A. 17-4 or about 16-4.

Q. About 16-4?

A. Yes, sir.

Q. And her freeboard?

A. About 18 inches.

Q. Have you increased that now in proportion to your load——

A. Well, 8 or 9 inches freeboard.

Q. As I follow you in that, you think a difference of 200 tons would let her out in the water only about 4 or 5 inches?

A. Yes, sir. In loading iron ore for a small vessel lots of times, you want a little more, and it is a small profit, and you daresn't take a chance on the splitting of the profit for fear it would all run out; so that it would vary there.

Q. But you think a difference of 200 tons would make a difference of how many inches in the draft?

A. Well, it would make a difference of 7 or 8 inches I would judge in a small boat.

Q. I was thinking it would make more. Now, you think it would make a difference of 7 or 8 inches?

A. Yes, that would depend upon the beam of the vessel.

Q. Would you not, then, want to change your answer as to how much free board she would have, when you had 2,600 tons; it would increase the freeboard, as it decreased the draft?

A. Yes, sir.

Q. How much freeboard would you say she had loaded to 2,800 your boat?

A. Well, not over 4 or 5 inches.

Q. Would you now think with 2,600 tons you would have 12 inches or would you not?

A. Well, yes.

Q. Have you been out in the heavy storms—by the way, your answers that you have given have been with reference to which boat, the Dalton or the others?

A. The Dalton in particular, because the Dalton carried iron and iron ore, and the Davidson was in the Canal trade more than the Dalton.

Q. But they were similar in type?

A. Yes, sir.

Q. And you didn't have any experience in the Davidson with ore or rails?

A. No, sir.

Q. And you didn't have any experience in the Davidson with ore or rails?

A. No, sir.

Q. How did the Dalton compare with the Noble, did you know the Noble?

A. Yes, sir.

Q. You were familiar with her?

A. Yes, I am familiar with seeing her pass by, and tied up at the docks. I never was aboard of her.

Q. What difference did you observe and can point out to me that would affect her carrying capacity and seaworthiness, one way or the other—between them?

A. The Dalton and the Davidson being built for the canal

396 tra were very bluff, whereas the Noble was a sharper vessel, with cleaner lines, faster, which ought to make her a better sea vessel.

Q. Did you know anything about her carrying capacity?

A. No, sir; I did not.

Q. You would not know then as to whether she ought to carry more or less than the Dalton?

A. No, sir.

Q. You don't know about that?

A. No, sir.

Q. You would not know very accurately about how much fuel she would consume, would you?

A. The Noble, no, sir; I would not.

Q. How much fuel would you put on the Dalton to make a trip loaded with your 2,800 tons of iron ore or steel rails, say rails from below; put it from Conneaut to Duluth?

A. Well, about 110 tons of fuel.

Q. You would put on about 110 tons of fuel?

A. Yes, sir.

Q. Did you figure to have some of that left over?

A. When we got back you mean?

Q. You figured just enough to go to Duluth with?

A. No, sir; the round trip.

Q. And you figured just about enough for the trip, so that if anything unusual occurred, you would coal somewhere at ports on the way down?

A. Why, if anything unusual occurred, we might have to coal up in the rivers.

Q. But you figured to put on just enough to make the round trip with, as I understand you?

A. Yes, sir.

Q. And you didn't plan on anything that uses up an unusual amount of it. If that occurred you would coal up before you got back?

A. Yes, sir.

Q. Because you would not want to carry an unnecessary amount of it up and back?

A. No, sir.

Q. Well, how much of that would you burn on the up trip about? I am to understand, as near as you can estimate, that was 110 tons for the round trip?

A. Yes, sir.

Q. How much would you burn on the up trip to Superior?

A. Oh, about 50 tons or 55.

Q. About half?

A. Yes, sir.

Q. It doe-n't take much more going up than coming back?

A. Well, a little more on account of the current.

Q. Not enough to figure on?

A. No, sir; possibly used 5 or 10 more going up than coming down.

397 Q. How did you load the Dalton when you carried rails, but I believe you said 18 aft and 17 forward?

A. Yes, sir.

Q. Would that be when you started?

A. Yes, sir.

Q. How would she be when you got back to Duluth, and I have in mind your burning up your fuel; how would that affect you?

A. Oh, it would come up possibly 8 inches.

Q. Aft?

A. Yes, sir.

Q. What would she be forward?

A. She would come down possibly a third of that.

Q. About a third?

A. Yes, sir.

Q. I would not expect you to estimate this carefully, but I was checking back now to see whether there is anything you could tell me to help me out of this proposition? That would make your mean draft $21\frac{1}{2}$ inches less at Duluth than when you started on account of the burning up of about 50 or 55 tons of coal?

A. Just about there.

Q. And if we should call that 50 tons, making her mean draft $21\frac{1}{2}$ inches less, then 200 tons would change your draft about 10 inches?

A. Yes, sir.

Q. Which would be again a little more than the other; which would you think the more accurate, figuring it out this way and say that 200 tons would change her draft 10 inches, or to leave it the way we had it before, from the other estimate? Would the other be more accurate?

A. I don't understand you.

Q. As I remember it, we were talking about if you carried 2,600 instead of 2,800, that it would make how much difference in your mean draft?

A. I would figure about $21\frac{1}{2}$ inches.

Q. I guess you don't understand me as to that. If you had 2,800 tons you would be 17 forward and 18 aft?

A. Yes, sir.

Q. That would make her mean draft 17-6?

A. Yes, sir.

Q. And if you only carried 2,600 tons what do you think her draft would be?

A. Well, about 17 and 16.

Q. About 17 aft and 16 forward?

A. Yes, sir.

Q. That would make a difference of a foot you think?

A. No, it would not make that much; 200 tons would not make a foot.

Q. What would you think now? Thinking about it now, what would be your best estimate?

A. Well, 200 tons would make pretty near a foot I would think.

Q. Then, as I understand it, on either one of those loads, you would have your stern draft about a foot less than the forward draft; the draft aft about a foot more than you had forward?

A. Yes, sir.

Q. When you started out?

A. Yes, sir.

Q. And if you did, by burning out the fuel get 8 inches less—or 3 less forward, do I understand when you got to Duluth you would be about 17-4 aft and about 17-3 forward?

A. Yes, sir.

Q. And is that about what you planned to load, so that the time you got above you are pretty near on even keel?

A. Yes, sir.

Q. In the burning of fuel, what is the proportionate difference, say from Conneaut to the Soo, and then from the Soo on into Duluth. You say you thought your draft aft would be 8 inches less than at Duluth. How much do you say it would be less when you got to the Soo of that 8 inches?

A. Oh, about 4 or 5 inches.

Q. Do you need to divide it then in the middle, or do you think there ought to be $\frac{5}{8}$ of it in the down trip and $\frac{3}{8}$ for the rest of the way?

A. Of the fuel?

Q. Yes.

A. Well, you consume an awful lot of fuel laying around Duluth and handling a cargo of rails. It takes steam to handle them.

Q. This 8 inches was when you got there?

A. Yes, sir.

Q. You had used that much up when you got there?

A. Yes, sir.

Q. Now, all I wanted to get at in that last question was, how much she would be out from the time she got to Duluth. Do you think she would come up 5 of that 8 inches before you got to the Soo, and then 3 inches from the Soo on up?

A. Yes, sir.

Q. Well, that is all, Captain. I am obliged to you.

By Mr. Leckie:

Q. This Dalton and Davidson belonged to what is known as the Great Lakes and St. Lawrence boats?

A. Yes, sir.

Q. And there is quite a fleet of those?

A. There are 10 of them.

Q. All the same kind of boats on the same line?

A. Well, some of them have deck cranes, and others have not. Those with deck cranes carry steel, and the others don't carry steel.

Q. In that line did you know a sailor by the name of Longley?

A. Yes, sir.

Q. How long was he mate in the line?

A. Oh, he came out in the boats, he was there 9 or 10 years.

Q. And during the time he was there, do you know whether
399 or not he was familiar with carrying steel rails?

A. Yes, sir; he was in the George C.—; he carried steel rails pretty nearly exclusively. Those vessels make a triangular trip. They took steel from South Chicago to Duluth, and then loaded grain to Montreal, and bring back coal to Oswego.

Q. Do you happen to know this man Longley was the mate of the Noble?

A. Yes, sir.

Q. Now, in regard to the comparison between those boats and the Noble, the Great Lakes and St. Lawrence boats have no steel bulwarks, have they?

A. No, sir.

Q. Just the stanchions and the wires?

A. Yes, sir.

Q. Are all of them single decked type?

A. Yes, sir.

Q. And the Great Lakes and St. Lawrence boats' after cabins are down below deck, aren't they?

A. Yes, sir.

Q. And this other type are built up above?

A. Their stern has a good deal more rise.

Q. Their stern has a good deal more rise?

A. Yes, sir.

By Mr. Laws:

Q. All these Great Lakes and St. Lawrence boats you have talked about open bulwark boats, have no solid bulwarks at all?

A. Yes, sir.

Q. So the water can freely get out?

A. Yes, sir.

Q. That is all.

The Court: That closes your proof?

Mr. Hill: We have more witnesses, but at this time I would like to make a statement in regard to the witness that we undertook to get here from Fenton, who was foreman of the gang down there at the Portland Cement dock. In response to a telephone call from our office, Mr. Essery talked to him, and we thereupon asked him to come to Detroit, and he said he could not get away until 3 o'clock, and would be in our office at 5:05. He was in our office last night, and we asked him to be here at 9 o'clock this morning, and he said he would. He did not appear this morning, and in talking with his family, his wife told us that he had had a telephone call from Fenton and that he must return at once to Fenton, and he has gone on the 6:20 train. That is why we cannot produce him. If your Honor
400 wishes, we will have a subpoena sent out, although we do not feel we require him ourselves. We simply want to let your Honor know we did not produce him.

The Court: Yes, I can very well understand that.

Mr. Leckie: There are a couple of weather reports we want to put in, one showing the condition of the weather on Lake Erie. Your Honor will recollect that the witness Morrison, the compass adjuster, testified it was blowing 35 or 40 miles an hour. This shows the maximum velocity at 38 miles an hour southwest. The other one is the report of the weather condition at Detroit on the day she got up here. The dates are Monday and Tuesday, the 21st and 22d.

The Court: Very well, they may be marked.

Weather report showing condition at Detroit marked Exhibit 38.
That showing condition on Lake Erie marked Exhibit 39.

RICHARD H. KNAPP, after being duly sworn on behalf of the libellant, testified as follows:

Examine.

By Mr. Laws:

Q. Capt. Knapp, where do you reside?

A. Port Huron.

Q. How old are you?

A. I am 45.

Q. You are a mariner?

A. Yes, sir.

Q. What licenses do you hold, Captain?

A. Master and pilot's licenses.

Q. How long have you held them?

A. I have held master's license 10 years.

Q. How long have you been a mariner on the Great Lakes?

A. 28 years.

Q. In April, 1914, you were the master of what boat?

A. The Steamer Lakeport.

Q. Tell us about how long a boat she is and about her beam and her depth of hold.

A. She is 260 feet long, 36 feet beam, and 27 feet molded depth.

Q. What is she built of?

A. Iron hull and wooden upper works.

Q. What was her capacity when loaded?

A. 2500 tons.

Q. Were you on Lake Superior with that boat on the night of April 27 and on the morning of the 28th, 1914

401 A. I arrived in Duluth on the morning of the 28th.

Q. At what time?

A. At 6:20 as near as I can remember.

Q. What time did you leave the Soo?

A. I left the Soo on the 26th.

Q. About what time of the day or evening?

A. In the morning.

Q. You had gotten aground at the Soo for a short time, had you not?

A. I had gotten aground in the Soo River in foggy weather.

Q. Had you seen the Noble anywhere near there?

A. I saw her below the Soo; passed her.

Q. You stopped at the Soo?

A. Yes, sir.

Q. To discharge some cargo there?

A. Yes, sir.

Q. How many tons of cargo did you discharge at the Soo?

A. 475.

Q. Leave you how much on board when you started for Duluth?

A. 2100 tons.

Q. Captain, when did you go on duty on the afternoon or evening of the 27th of April, on watch?

A. I went on at 6 o'clock on the night of the 27th.

Q. What time did you go off watch?

A. I went off about 12:30 on the morning of the 28th.

Q. Where was your boat at 12:30 at the time you went off watch?

A. Between Devil Island and Sand Island.

Q. About how far from Devil Island toward Duluth had you gotten, when you went off duty, how many miles?

A. Oh, it is about 6 miles.

Q. What course were you steering at the time you went off duty?

A. Southwest by west half west.

Q. How -as the wind blowing, the direction of it at that time?

A. Northeast.

Q. How was it blowing as to strength?

A. As near as I can remember it was blowing about 30 miles an hour.

Q. Was it having any effect upon your vessel?

A. No, not particularly.

Q. How was the sea running at that time?

A. Nothing unusual at all.

Q. Nothing unusual?

A. A little sea running, but nothing unusual.

Q. Did it worry your vessel a particle?

A. No.

Q. Were you taking on any seas?

A. No.

Q. Who relieved you on the bridge at 12:20?

402 A. My mate. The mate came up at 12:20 but I didn't go down until about 12:30.

Q. Who was the wheelsman that took the wheel when the mate came on his watch?

A. His name was McCloud.

Q. McCloud was the wheelsman in the next watch?

A. Yes, sir.

Q. Then you turned in, did you, or what did you do?

A. Yes, I went down.

Q. Did you turn in at that time?

A. I laid down, yes, sir.

Q. You laid down?

A. Yes, sir.

Q. Was there anything to apprehend in the condition of the weather or the sea so you should not turn in at that time?

A. No.

Q. Tell us whether or not you make any rule on your boat as to whether you shall turn in, or as to whether you shall be called, if the weather is unusually bad?

A. If it is unusually bad, I am generally called.

Q. And that is the rule on your boat?

A. Yes, sir.

Q. Did anybody call you during that night?

A. They did.

Q. What time?

A. 5 o'clock or about that time.

Q. What for?

A. The mate came down and told me the wind was making and the sea was freshening up. That was about 5 o'clock.

Q. What did you do?

A. I got up and went in the pilot house.

Q. How much wind do you think was blowing at that time?

A. I should think the wind was then between 40 and 45 miles an hour.

Q. How far in from Duluth were you then?

A. We were just about an hour from Duluth.

Q. Was that your time to get up in coming in to Duluth anyhow?

A. Well, not necessarily. If it had been smoother weather I would not have gotten up then; they would not have called me.

Q. Did you take charge of the boat until you got into Duluth?

A. Yes, sir.

Q. Did you have trouble in getting into Duluth?

A. No, we made the piers all right.

Q. You made the piers all right?

A. Yes, sir.

Q. Did the mate say anything to you about a boat he had seen during the night?

A. He did after I went up into the pilot house. He said he met a fellow going to Two Harbors and his dynamo stopped.

403 Q. Did he say anything about why his dynamo stopped?

A. No, he didn't.

Q. He just said his dynamo stopped?

A. Yes, sir.

Q. When did you first hear, Captain, that the Noble was lost, how soon after that?

A. It was a couple of days after we arrived at Duluth.

Q. While you were in at Duluth?

A. Yes, sir.

Q. I understand you to say that at the time you went off watch and the time you came on watch again, you went off at about 12:30 and the time you came on again about 20 minutes after 5—was it?

A. It was near 5 o'clock.

Q. About 5 o'clock you had no trouble to navigate your boat?

A. No.

Q. You were not shipping water?

A. No, sir.

Q. And you took her straight in Duluth without any trouble?

A. Yes, sir.

Cross-examination.

By Mr. Leckie:

Q. Is it not customary also on the Great Lakes, and on your boat, Captain, that if an accident happens to another boat anywhere in the immediate vicinity, to call the Captain?

A. There was no accident happened that I know of.

Q. Answer my question now, please. Is it not customary that if in your vicinity you see another boat in trouble you would expect to be called, would you not?

A. Yes, sir.

Q. But you were not called?

A. No, sir.

Q. And you heard nothing about any accident?

A. No, sir.

Q. And all that you heard was mentioned to you casually, that the fellow's dynamo stopped?

A. Yes, sir.

Q. He didn't say anything to you about a boat being in trouble in the troughs of the sea and coming this — (motioning), did you?

A. No, sir.

Q. He didn't say anything about a boat being in trouble at all?

A. No, sir.

Q. Nor anybody else on your boat?

A. No, sir.

Q. If any story of that kind was going the rounds of your boat, you would have heard it, would you not?

A. I would most likely.

Q. Now, your boat is one of the Buffalo line of boats?

A. She is the old Boston.

404 Q. And those boats are built particularly for package freight?

A. Yes, sir.

Q. They are built with a high free board for carrying package freight?

A. Yes, sir.

Q. They are known as the propeller type?

A. Yes, sir.

Q. And probably the best boat we have ever had on the lakes?

A. Yes, sir.

Q. With the boat in the trim you have here leaving the Soo for Lake Superior, she would be in the very best trim you could put her in in any sort of weather?

A. Yes, sir.

Q. And running along ahead of it, the storm would not be particularly noticeable to you in that boat?

A. No.

Q. In order to get any water on the deck of your boat, running ahead of it, there would have to be a very violent gale and sea, wouldn't there?

A. Yes, sir.

Q. She was in good light condition and was built up high?

A. Yes, sir.

Q. Do you know, Captain, by the way she is built aft there, built up, so long as nothing went wrong with your machinery, she didn't broach to, as long as you kept her running ahead of it, do you think the sea would break over her stern at all?

A. No, I don't think it would.

Q. In any storm?

A. No, I don't think it would.

Q. In regard to getting down to Duluth, you did strike the piers nicely, did you?

A. I did.

Q. Got them nicely in line?

A. Yes, sir.

Q. And all you had to do was to keep her going as she was and sail on in?

A. Yes, sir.

Q. When you got down there, Captain, if there had been a snow squall, or thick weather of any kind, so that you could not have picked up the piers, or if you fetched half way between Duluth and Superior, what would you have to do?

A. Go out and head to it, I suppose.

Q. That is, you would have experienced more gale?

A. Yes, sir.

Q. And then you would begin to have some trouble?

A. Yes, sir.

Q. You would not like to do that?

A. No, sir.

Q. Even if your boat was in fine condition, that would be a mighty serious predicament to be in, would it not?

A. Yes, sir.

Q. Now, it was an hour or so before your getting into
405 Duluth, that the mate came and called you?

A. Yes, sir.

Q. And told you it is fresh-ing up and the sea making more?

A. Yes, sir.

Q. And that would indicate to your mind that it had been doing that for some little time?

A. It would.

Q. He would not have come to call you immediately on that condition starting?

A. No.

Q. With that type of boat, in the condition she was running ahead of it, unless there was something specially to call your attention to it, or you experimented or something, it would be pretty hard to make any close judgment of the wind prevailing, would it not, when you are running ahead of it?

A. Just my judgment, that is all.

Q. I say under those conditions, it would be pretty hard to get anywhere near to accuracy, would it not?

A. Yes, sir, it would.

Q. And you would be much more liable to underestimate it under those conditions than you would to overestimate it?

A. Yes.

Q. You know the Steamer Minneapolis, don't you, Captain?

A. I do.

Q. She is a double decked steel package freight boat?

A. Yes, sir.

Q. A fine ship?

A. Yes, sir.

Q. About as good as there is?

A. Yes, sir.

Q. If the Minneapolis went out of Duluth and had to turn around and went back, lost her deck load, you would say she was in a pretty bad gale of wind, would you not?

A. Yes, sir.

Q. That is all.

Mr. Laws: That is all.

By the Court:

Q. How was the weather, so far as being thick that night?

A. Well, when I went off watch we could see the boat ahead of us probably 10 or 12 miles. She passed up before 12 o'clock. At 12 o'clock we could see her 12 miles off.

Q. How was it in the morning when you came back on deck, about 5 o'clock I think you said?

A. I picked up Duluth about 10 minutes to 6, and I didn't get there until——

Q. Had it got so light that you picked it up by the day light or by the lights burning yet?

A. No. Day light.

406 Q. By seeing the city?

A. Yes, sir. The first thing I saw was the bridge.

Q. The lights on the pier were out?

A. It was day light.

Q. And the lights were not burning?

A. No.

Q. And from the time you turned in at 12:30 until 5, you would not be able to tell me anything about the condition of the weather?

A. No, I don't know anything about the condition of the weather then.

Q. I think you said that in your opinion, the wind was blowing about 40 to 45 miles when you were called?

A. Yes, sir.

Q. At 5 o'clock?

A. Yes, sir.

Q. Did it blow harder after that?

A. Yes, it kept freshening all the time.

Q. What do you think it was blowing when you got in?

A. That is what I say, when I got in it was between 40 and 45 miles an hour.

Q. Then do you mean to say it had freshened from 40 to 45 miles an hour in that time?

A. Yes, sir.

Q. Did you observe how the waves were breaking there on the light house and on the piers as you came in?

A. The waves were running over the piers when I went in, off and on.

Q. As they would strike there they would break over the piers and over the light house?

A. Not over the lighthouse, over the piers.

Q. Is that an unusual thing there?

A. No, sir, lots of times they would break over the piers. With the northeast wind the seas will break over the piers.

Q. You said your boat was a better boat for storms than most of the boats on the lakes?

A. That class of boats are so considered.

Q. Now, as to your getting in between the piers there, is there any difference in that; would you be better able to do it with your boat than you would with other boats?

A. I don't think so.

Q. This advantage that you spoke about, about weathering a storm, in not making those piers there?

A. Yes, I mean that.

Q. Do you know this boat, the Noble?

A. I have seen her and that is all. I have not been aboard of her.

Q. That is all, Captain, I thank you.

407 MURDOCK H. McLENNON, after being duly sworn on behalf of the libellant, testified as follows:

Examined.

By Mr. Laws:

Q. What is your business?

A. Chief keeper of the United States Coast station.

Q. At what point?

A. Duluth, Minn.

Q. Where is your station?

A. It is on Minnesota point.

Q. Is that an exposed position on the lake there?

A. Yes, sir.

Q. Were you on watch at any time on the night of the 27th of April and the morning of the 28th of April, 1914?

A. Well, I was not really on watch. I didn't turn in though until between midnight and one o'clock. That was the night of the 27th.

And I was up again very shortly after 6 o'clock. It might be before 6 on the morning of the 28th, Tuesday morning.

Q. Did you take any note of the condition of the weather up until the time you turned in on the morning of the 28th, between 12 and 1?

A. Not in particular.

Q. Tell us just what the condition of the weather was, as far as you noticed it, on the evening of the 27th, up to the time you turned in?

A. As far as I remember it at the present time, it began to freshen up from the northeast sometime during the afternoon of the 27th, and was blowing fresh about 6 o'clock, and then, if I remember right, the wind went down some, but it commenced to freshen up again before midnight, and was blowing right fresh at midnight, but I could not say exactly what the wind was blowing.

Q. Anything unusual?

A. No, sir, nothing unusual at that time.

Q. What time did you get up again in the morning of the 28th?

A. I am not sure. It wasn't far from 6 o'clock.

Q. How was the wind and weather at that time?

A. It was blowing pretty hard from the northeast and raining.

Q. About how hard would you say it was blowing at that time?

A. Well, I do not say just now. I do not know. I think it was blowing over 40 miles though at that time.

Q. Would that be your best judgment, a little over 40?

A. That is my best judgment.

408 Q. A little over 40?

A. Yes, sir.

Q. How was the sea at that time?

A. The sea was fairly heavy, what I would call rough.

Q. Then during the day of the 28th, what happened by way of the weather?

A. It developed into a very severe storm.

Q. On the day of the 28th?

A. Yes, sir, especially during the afternoon.

Q. And then what happened on the night of the 28th and the morning of the 29th, so far as the weather was concerned?

A. Well, it kept on increasing. I don't think the wind increased any, but the sea kept increasing until some time after dark of the 28th, because it came up higher on the beach there after dark on the 28th, and before day light on the 29th, than at any time during the storm.

Q. Are storms frequent or infrequent during the early months of the year up at that point, Captain, on Lake Superior?

A. Well, right there we are very subject to those storms in the spring of the year, during the months of April and May.

Q. When you got up on the morning of the 28th about 6 o'clock you didn't notice anything unusual about that storm, did you?

A. No, not at that time.

Q. The worst of the storm came along after that and had its worst fit some time in the afternoon of the 28th?

A. Yes, sir. The wind might have been blowing just as much as when I got up, but the sea was not.

Q. The sea was not?

A. Oh, no, not near.

Q. Now, Captain, is George Emerson one of your surfmen?

A. Yes, sir.

Q. Apparently a man named George Emerson gave some testimony at Duluth that you have heard read in court, have you?

A. Yes, sir.

Q. His testimony was taken a short time ago. I want to ask you whether or not you had any conversation with Mr. Emerson after his testimony was taken on the subject?

A. Yes, sir.

Mr. Canfield: That is objected to as immaterial and incompetent.

The Court: Well, that may stand. There is no harm in that.

Q. Please tell us, if anything, that Mr. Emerson said to you with respect to his testimony?

Mr. Canfield: That is objected to as incompetent, irrelevant and immaterial.

409 The Court: I will have to hold that as hearsay.

Mr. Hill: It is nothing serious.

The Court: If that witness was here in court, I would let you ask him: Did you tell the Captain thus and so; and if he says no, I would let you call the Captain and ask him, Did he say so and so, and that would be for the purpose of contradicting and impeaching, or affecting credibility.

Mr. Laws: I will not insist upon it. I will not ask the question. We will be fair about it. Cross examine.

Cross-examination.

By Mr. Leckie:

Q. I understood you to say that shortly after midnight of the 27th, you turned in?

A. Yes, sir.

Q. You didn't get up again until practically breakfast time?

A. Well, about 6 o'clock.

Q. So that during that interval you haven't any personal knowledge as to what was going on?

A. No, sir.

Q. And you are testifying from your recollection now of the affair?

A. Yes, sir.

Q. In regard to the velocity of the wind, the weather bureau records, with their instruments, would probably be better than your recollection?

A. Possibly.

Q. But when you did get up in the morning at 6 o'clock of the 28th, it was blowing hard?

A. It was blowing quite fresh.

Q. Now, in regard to the sea there, Captain, have you ever noticed in your experience, that the sea has a tendency to back up there, and there is what you gentlemen call a back set?

A. Back of where?

Q. At that end of the lake?

A. Not in front of where I am there.

Q. You don't understand that there is any back set there?

A. Not in that particular place.

Q. I mean out in the lake?

A. Oh, I know what you mean. In some parts there is quite a back set.

Q. And a boat getting down into a situation of that kind, with a back set, she is practically getting the sea from all directions, isn't she?

A. Yes, she is getting it from all quarters, that is true enough.

Q. And there are places in that Minnesota point where that condition prevails in a heavy sea, in a northwest wind?

A. I don't know how it is outside.

Q. It would be outside then, would it not?

A. Not outside the breakers that I know of.

Q. Do you know about the open water, about the distance the open water in the northeasterly direction from your station, we will say, do you know about how much the mileage is of direct open water up to where it stops and strikes land?

A. What do you mean by that?

Q. I will get at it in this way: You have practically a straight stretch of water throughout the whole of Lake Superior in a north-west direction?

A. Oh, yes. I didn't understand what you meant. I understand now.

Q. Clear up to Battle Island?

A. Yes, sir.

Q. Now, I want to get your idea of that distance. It is 250 miles isn't it?

A. Oh, yes, it is 250 or better.

Q. And that is about as long an open stretch of water as we have on the Great Lakes anywhere?

A. I presume so.

Q. And with a northeast wind blowing for any appreciable length of time, it does not take long to make a big sea when it continues in that direction, for that long distance, does it?

A. Well, that depends upon whether it is blowing all that distance.

Q. Well, if there were men out in boats off Keweenaw Point between there and Battle Islands, up in that broad body of water that had the wind northeast, that would indicate to you it was blowing for that whole distance, would it not?

A. Yes, sir.

Q. So then a northeast wind in that long exposure would create a bigger sea with less velocity of wind than almost any other place on the lakes, would it not?

A. Well, I presume it would.

Q. There was no wreckage of the Noble picked up until the 29th, was there?

A. No.

Q. And you didn't know anything about the time the Noble went down?

A. No, sir.

Q. All you can do is speculate back from the time you picked up the wreckage?

A. That is all.

Q. You have no knowledge that she went down the morning of the 28th or anything of that sort?

A. No, sir.

By the Court:

Q. Was any one patrolling the beach during the night of the 28th?

A. Yes, sir.

Q. If there had been wreckage drifting in on the evening
411 of the 28th or night of the 28th, it would have been found?

A. Yes, I think so.

Q. And it didn't come in until the 29th?

A. Yes, sir.

Q. I was wondering whether you found it when it came in, in the morning, or it might have come in at any time of the night, or whether you had the beach so patrolled that it would have been reported, and you would have found out about it?

A. No, sir, there was a man that patrolled from 4 to 6 in the morning, and the man that found the wreckage left the station about 10 minutes after 8, and about half past 8 he called me up by telephone and told me what he found.

Q. Now, Captain, with the wind blowing the way it was there at that time, if the wreck of the Noble had occurred off somewhere off Two Harbors, near Two Harbors, how long would that wind—can you give me some idea as to when you would expect that wreckage in there?

A. No, sir, I couldn't.

Q. Can you come near enough to tell me this: Whether if the wreck had occurred Tuesday morning, along about 4 o'clock of the morning of the 28th, would it come in that same morning; would you expect it to come in that same morning; could you tell within 24 hours whether the time you would expect it would be the morning of the 28th or the morning of the 29th, say along 4:15?

A. It would be more likely to come in Wednesday morning.

Q. It would.

A. Yes, sir.

Q. From your experience, could you give me that estimate? Do you feel certain about that, or reasonably certain, or not very certain?

A. I would say that it would be more likely to come ashore Wednesday morning than Tuesday morning with that distance.

Q. No wreckage of this boat was ever found on the north shore?

Mr. Laws: No, sir, your Honor.

Q. That was from the other boat?

Mr. Laws: From the Minneapolis.

Q. Am I going to hear any testimony as to that?

Mr. Laws: We haven't any.

Q. Let me ask you this: How long have you been along that end of the lake?

412 The Witness: 16 years the 20th of last September.

Q. How long at that particular station?

A. During all that time.

Q. Now, from your experience can you give me any opinion that you feel confident about as to this: Suppose the Noble had been wrecked in Two Harbors at 4:15 on the morning of Tuesday the 28th, and the wind blowing as it was, and you know something about the wind there, where would you expect the wreckage to be picked up?

A. Well, it is very likely to come ashore where it did, with the wind from the northeast as it was, as I recollect. The current might have some influence on that, but I don't know.

Q. Why would it not go on the north shore if it occurred at the point I have described in the question?

A. I don't think the wind would let it go to the north shore blowing in that direction.

Q. Was it not just about straight down the lake?

A. Practically.

Q. Why would it be any more on the south shore than on the north shore?

A. Well, it is way up from the south shore altogether. Several miles from the south shore.

Q. I say why would the wind be blowing on the south shore more, or wasn't it?

A. No, sir, it was blowing right into the end of the lake.

Q. Well, you are at the end of the lake, aren't you?

A. Yes, sir.

Q. Now, the Minneapolis coming in there threw off some shingles, and it seems to me to be reasonably certain, and I think there is no dispute about the fact her shingles were picked up on the north shore—how far down from Duluth?

Mr. Hill: Up near Lakewood. I think the Captain knows all about that.

The Witness: I heard there were shingles picked up there, but I didn't see them.

Q. What I am wondering about is this: Those steamboats would have been blown in down where you were and where the Noble was, if a boat coming in Duluth produced the wreckage, why it did not drift in down where you were?

A. I don't know. I understand she was moving back and forth at the head of the lake all night, so that probably she went
413 nearer to the north shore than this wreckage was.

Q. Which boat are you talking about?

A. The Minneapolis.

Q. You understand she was going back and forth there too?

A. Yes, sir, I understood so.

Q. Well, you would interpret this record then, as you understand it, in this way: That the wreckage from the Minneapolis must have been thrown pretty close to the north shore in order to come in where it did?

A. It must have been, part of it, but it wasn't all thrown off there. There was some thrown off in front of our station.

Q. Did it come into your station?

A. It came in almost to the breakers.

Q. Did these shingles she threw off opposite you come in there?

A. Yes, sir.

Q. There were shingles picked up from the Minneapolis at other places than on the north shore?

A. Yes, sir.

Q. That would not be surprising then that the waves will carry wreckage to more than one place?

A. No, sir, it would not be surprising at all.

Q. So that in reality we cannot take the place where this wreckage landed, and the direction of the wind, and find the spot where the ship foundered or went ashore, or whatever she did, with any degree of accuracy?

A. I would not want to undertake it.

The Court: I guess we all agree on that, don't we?

Mr. Leckie: I do, at any rate.

The Court: Not to be accurate about it?

Mr. Laws: Oh, yes, your Honor.

By the Court:

Q. Do you know from how large a distance the wreckage from the Noble was picked up?

A. Along the beach?

Q. Yes.

A. It was from about 12th St. to 37th or 38th and possibly up to 40th. That would be a mile and a half or a mile and three-quarters something like that. From 24th Street to 40th Street.

Q. You have had a number of wrecks in there?

A. Yes, sir.

Q. Isn't that a small area for the wreckage of a boat to 414 confine itself, so small a distance as that, or would it be usual?

A. We have had no wreckage of that sort coming ashore there during all the time I have been in Duluth.

Q. So you have nothing to guide you in forming an opinion?

A. No, sir.

Q. I take it the shingles from the Minneapolis were picked up, and the wreckage, along a shore line a good deal greater than that?

A. Yes, sir.

Q. But does any one know, even by hearsay, whether she was throwing them off at different periods?

Mr. Hill: We do not know, your Honor.

Q. The most emphatic things about this is we can not tell very much about as to where the wreck occurred from the place where they found the wreckage?

A. No.

The Court: That is the only thing we can be sure about.

A. I could not say anything about that part at all.

Examined.

By Mr. Leckie:

Q. Captain, the whole wreckage that you found was wood, different kinds of wood?

A. Mostly hatches.

Q. And those were in good form, dry condition, weren't they. That is of course they were wet as you found them, but they would indicate they were dry?

A. Those that were whole were dry; most of them were broken up.

Q. What I am getting at is this; it was such material as would drift fast?

A. Yes.

Q. With that kind of a wind would drift fast?

A. Yes, sir.

Q. The expression which has been used here about shingles thrown off the Minneapolis, you would not understand they were thrown off deliberately. You suppose they were wash- off by the sea?

A. That is the way I would put it.

By Mr. Laws:

Q. What day was it, Captain, that the Minneapolis went out? or came in?

A. She came in the morning of the 29th. I don't know the day she went out. Some time about 6 o'clock on the 29th.

Q. She came in the morning of the 29th. She was out during that time and nothing happened to her?

A. (No answer.)

415 JOSEPH PAYER, after being duly sworn by the court on behalf of the respondent, testified as follows:

Examined.

By Mr. Laws:

Q. Mr. Payer, where do you live?

A. Minnesota Point, Duluth.

Q. Did you live there in April, 1914?

A. Yes, sir.

Q. Tell us what your business is?

A. Me? I am in the lighthouse service.

Q. And were you in that business in April, 1914?

A. Yes, sir.

Q. How long a time prior to April, 1914, had you been in the lighthouse service, about?

A. Well, I have been in there four years the first of April coming now.

Q. What did you do before that, Mr. Payer?

A. I was sailing.

Q. You were sailing before that?

A. Yes, sir.

Q. What are the duties, what did they require you to do as assistant light keeper?

A. Why light up the lights, blowing the fog whistles and other work around the station.

Q. Where are the lights that you have to take care of, where are they?

A. One on the end of the north pier and one on the end of the south pier in connection with the fog signal, and the range in the rear of them.

Q. Were you on duty the night of the 27th of April, 1914, and the morning of the 28th of April, 1914?

A. Yes, sir.

Q. What time did you go on duty?

A. My watch was 4 to 8.

Q. 4 o'clock the morning of the 28th to 8 o'clock the morning of the 28th of April, 1914?

A. Yes, sir.

The Court: And the same way in the afternoon?

A. It is always that way.

The Court: Morning and afternoon?

A. Yes, sir. I was on there at that time from 4 to 8.

By Mr. Laws (continuing):

Q. 4 o'clock the afternoon of the 27th to 8 o'clock at night?

A. Yes, sir.

Q. And you went off from 8 o'clock to 4 o'clock on the 28th?

A. Yes, sir.

416 Q. Then you went on from 4 o'clock the morning of the 28th to 8 o'clock the morning of the 28th?

A. Yes, sir.

Q. Tell us whether you had an opportunity to observe the condition of the weather from the time you went on duty at 4 o'clock the morning of the 28th to 8 o'clock the morning of the 28th?

A. Yes, sir.

Q. Tell his Honor what kind of weather there was when you first went on and when you went off?

A. When I went on watch it was raining and blowing a little, just a little. I should judge about 25 or 30 miles an hour.

Q. How long did that continue about that way. How long did that condition continue?

A. That kept on until about 5 o'clock I should judge.

Q. 5 o'clock. What if anything did you do at 5 o'clock in the line of your duties?

A. I started to put the lights out at that time.

Q. Where was the light that you started to put out?

A. The one on the north pier, as I stated before.

Q. On the end of the pier?

A. The whole three lights.

Q. They were on the ends of the piers?

A. Two on the end, and one in the rear.

Q. And the two on the end are out on the lake?

A. Yes, sir; one on the north pier, on one pier; also the south end.

Q. Those are on the extreme ends of the pier?

A. Yes, sir.

Q. Did you have any difficulty in getting out to those lights to put them out?

A. No, sir.

Q. Was there any water coming over the piers at that time?

A. Not when I went out.

Q. How long did you stay out on the end of the pier?

A. I stayed out on the south pier about half an hour.

Q. What was the condition when you started to come back? Was there any change in the condition?

A. Well, no. Did I say there was no water coming before?

Q. Yes.

A. There would be a sea coming over occasionally but not very often.

Q. Coming back was there any change?

A. Just about the same. Of course the weather was increasing at that time.

Q. Did you have any difficulty in either coming in or out, when you put out the lights?

A. No, sir.

417 Q. About that time tell us what if any change took place in the weather as the day grew on?

A. As the day grew on it kept getting worse until it was the worst time I have ever seen up there since I have been there.

Q. That was what time of day on the 28th?

A. What do you mean?

Q. That the storm got worse?

A. Oh, along about 9 or 10 o'clock, it kept getting worse. In the afternoon it was at its height, that is, along about supper time.

Q. Now, Mr. Payer, considering the condition of the weather and sea when you went out in the morning to put the lights out, tell us whether or not, while you have been there, there has been worse weather than there was at that time?

A. I have seen worse up until that time of morning.

Q. That is what I mean, up to that time of morning?

A. Yes, sir.

Q. Frequently?

A. Why, yes. Not very often, but we expect it.

Q. You expect it?

A. Yes, sir.

Q. What provision is made for going out to the end of the pier in case of bad weather, or water dashing over the pier?

A. When it gets so we can not go over the top, there is a tunnel underneath.

Q. Tell us about that, how you go out in that tunnel.

A. That tunnel is in this shape (showing), half a round about. There is a car in there, that you have to lay down under it and pedal it with your hands the same as a bicycle. That is the way we go out. You have to stay in that condition until you get out there because there is not room enough to raise your head.

Q. And it is not a very comfortable position?

A. No, sir.

Q. Is there a tunnel in each pier?

A. Yes, sir.

Q. And those tunnels are provided for the light men so they can go out to the lights to light them or put them out when the weather is bad and the water is dashing over the piers?

A. I beg your pardon. On the north pier it is not for that purpose because you have to crawl through, if you want to get through. It is a hard proposition, and you could not do it.

Q. On the south pier?

A. There is a car.

Q. In your experience there of about 4 years have you had to use those tunnels to go out to the lights?

A. Yes, sir.

Q. About how often?

A. Oh, we used them twice last season.

418 Q. Twice last season; that is 1914?

A. 1914; yes.

Q. And about how frequently the previous years?

A. Why, I have never had to use them; that is the only time I had to use them since I have been there. The storms were never bad enough so we had to use them before.

Q. And you did not have to use them of course, that morning you went out to light the lights?

A. No, sir.

Q. Oh put the lights out, I mean. You went along the pier?

A. Yes, sir.

Q. There is some testimony in this case that a section I think of the cement work, of one of those piers having been carried away?

A. Yes, sir.

Q. Do you know what time it was that was carried away?

A. That was carried away—I could not say for sure, but it was carried away during the night of the 28th, I think.

Q. It was there when you went out the morning of the 28th?

A. Yes, sir.

Q. Tell his Honor, please, what the shape of that stone was, that section, what the shape is?

A. I should judge it was about 3 feet high, and 2 feet across the

top; this particular block had a big scupper in it to clear the water from the inside of the piers. You know what I mean, back of the piers.

Q. Will you take this paper and draw a rough sketch?

A. I don't think I can.

Q. Cross examine.

The Court: We will take a recess in this case for five minutes.

(Recess.)

Cross-examination.

By Mr. Leckie:

Q. Even in the morning, I understood you, you would estimate the wind to be 25 miles or so?

A. That is my judgment, yes.

Q. That is only an estimate of judgment?

A. Yes, sir.

Q. And it might very easily been more than that?

A. It might have been, not a great deal.

Q. Do you know Mr. Leaderlee, do you call him?

A. He is my keeper, yes.

Q. He is a man 64 years old?

A. Yes, sir.

Q. And of long experience in the service?

A. Yes, sir.

419 Q. And he has seen a good many more storms than you have?

A. Yes, sir.

Q. And you would be more inclined to take his judgment on that than your own?

A. How is that?

Q. You would be more inclined to rely on his judgment?

A. It all depends.

Q. How will you answer that? Do you prefer your own judgment to his?

A. No, sir.

Q. Also you think probably the weather bureau would have it a little better than you would?

A. I should think so.

Q. Even at that time there were seas running across there occasionally?

A. Yes, sir.

Q. And the matter of your getting out, I suppose you watched your chance?

A. No, sir, not going out.

Q. Coming back, did you?

A. No, sir; I came along in.

Q. And did not pay any attention to the seas; just went sauntering along, head up in the air?

A. Yes, sir.

Q. This block of masonry, regardless of its shape, it was set in there solidly, was it not? as it was originally put in?

A. No, sir, it was not.

Q. Didn't they have some cement and fit up against some of the other blocks? something of that sort?

A. The only place it would be solid—I believe I will try to draw that for you. (Witness takes paper and pencil and makes sketch.) That is the scupper there (indicating). This is about 10 feet here; 2 feet across the top, and about 3 feet down. This is about 16 inches here (indicating). I should think that would be about 5 feet across there.

Q. Describing the block of masonry as 10 feet long?

A. And there is stuff here, you understand, between each block, each section. This goes clean across. There is another parapet on the other side just the same as that. This particular block there *was* a scupper in it. There are three scuppers along there. These were put in after the Matafa storm.

Q. This block of masonry is 10 feet long and two feet across the top of it?

A. About two feet, I could not swear to it, it is about **two feet**.

Q. Three foot top?

A. Yes, sir.

Q. It has a scupper in it about 5 feet long?

A. Yes, sir.

Q. How deep?

A. 16 inches about.

Q. 16 inches deep?

A. I think you can get that now.

420 Q. And the block was no doubt put there in anticipation of the storms and seas working in there. Is that not a fact?

A. Yes, sir.

Q. And the very purpose of putting the hole in there, the scupper, was in contemplation of seas breaking over there, to let the water run out?

A. To clear the pier, yes.

Q. And it was a part of the parapet—I think you used the word, did you?

A. That is the parapet, yes.

Redirect examination.

By Mr. Laws:

Q. Where do the waters strike that block when they come up there?

A. When there is a big sea rolling in, what the fog signal is set on, and part of the pier extends out; the seas come rolling in there and come up in that scupper.

Q. Come up in that scupper, tending to raise it up?

A. Yes, sir.

Q. That is what I thought.

MURDOCH H. McLENNON (Recalled) for further examination.

By Mr. Laws:

Q. Captain McLennon, did you go out with your crew, boat crew, into the lake, at any time, off shore to look for wreckage of the Noble?

A. Yes, sir.

Q. When?

A. It was the 29th.

Q. Wednesday, the 29th?

A. Yes, sir, or no, excuse me. It was on Thursday, the 30th.

Q. Thursday, the 30th?

A. Yes, sir.

Q. Tell his Honor just exactly what you did in that. What time of day did you go out?

A. We left the station at about 8:10 that morning of Thursday the 30th. We worked back and forth down the lake from one side to the other, looking for signs of anything of the Noble, about 10 miles out. About E. N. E. from the canal piers, we picked up three pieces; a piece of hatch, a piece of the corner of the roof of the house, and then a piece that shape (showing) with a piece of canvas attached to it; a piece of lining, of her cabin lining and a brass clothes hook attached to it.

Q. How far off shore was that, Captain?

A. Well, I should judge it would be about between 3 and 4 miles off from the north shore.

421 Q. How far out from Duluth?

A. It would be between 9 and 10 miles, I should judge at the time.

Q. 9 or 10 miles from the Duluth piers?

A. The way we run down there I have no accurate way of judging the distance from the way we were running, because we were going back and forth from side to side, from one shore to the other.

Q. But that would be your judgment?

A. Yes, sir; that is my best judgment.

Q. About what time of day was it that you got out there?

A. It would be somewhere about 10 o'clock I should say.

Q. 10 o'clock you presume?

A. Yes, sir.

Q. Did you find anything else out there?

A. No, sir. We went out about between 18 and 20 miles, and came back the south shore, arriving back at 3:15 in the afternoon.

Cross-examination.

By Mr. Leckie:

Q. Captain, the place where you find this wreckage, if she sunk anywhere in that vicinity, she did not sink up at this other point above Two Harbors, did she?

A. She could not have sunk between there and that shore, because there was no change of wind before I picked up this wreckage.

Q. Let me ask you this: When the wind is from the northeast, the water piles up in the harbor at Duluth and Superior, does it not?

A. Yes, sir; sometimes if it blows heavy.

Q. And it piles up for a certain length of time or certain distance, and then it begins to set back to find its own level, even with the wind still prevailing northeast, it will tend to set back out in the lake?

A. Yes, just as soon as the wind begins to abate.

Q. Even with the wind continuing, it comes to a time when it piles up, and won't go further, and comes back?

A. It stays until the wind begins to go down usually. It gets to a certain level and stays there until the wind begins to go down.

Q. Do you think the water stays right there at that level?

A. I have seen it stay there a long time at the same level, perhaps 24 hours at a time practically.

Q. There are two outlets to this place?

A. Yes, sir.

Q. And the river runs down there?

A. Yes, sir.

Q. And as soon as this period of back-set starts, the current
422 rents are setting out into the lake through both of those piers?

A. Yes, sir; of course.

Q. And as soon as they get outside the current begins to deflect in both directions?

A. Naturally, both directions.

Q. And the mere fact you found refuse out there on the 30th would not necessarily indicate that she had not sunk between there and Minnesota Point, would it? The current might have been setting that stuff back?

A. That is my opinion. I can not see that it was possible for that stuff to get there if the boat had sunk between there and Duluth piers.

Q. Would not that depend upon whether the water had reached its maximum height in the harbor and had begun to set back again?

A. I don't think it would take it there at all, especially one piece, which was a piece of pine so light it would never go there at all with the wind blowing as it was.

Q. That is the current would not take it back?

A. No, sir.

Q. You don't know, do you, as a matter of fact, whether the current, or whether the water began setting back again at this time?

A. When I found this hatch?

Q. Yes.

A. Oh, the water was perfectly calm when I found this wreckage.

Q. The back-set had started before that time?

A. There was no sea or current at all.

Q. It had run back down to its normal level?

A. Yes, sir; during the night.

Q. The back-set, which naturally occurs after the water piles up, had taken place previous to the time you found the wreckage?

A. Yes, sir.

By the Court:

Q. Were these three pieces of wreckage that you found on Thursday, April 3-th, near together, both in time and place, that you found?

A. They were not very far together. I do not think it was more than a five minute run.

Q. You mean not very far apart.

A. Between each piece. There would not be more than half a mile or so, maybe a little more than that.

Q. They were in the same locality?

A. Yes, sir. It is hard for me to remember those things now.

Q. Tell me what wreckage you found. Give me some idea of the parts that you found and the quantity of it all told?

423 A. The piece of hatch I think would be about—

Q. Those three you described fully enough.

A. That is what I mean.

Q. But I mean that you found before that?

A. That came ashore on the beach.

Q. That came ashore on Wednesday?

A. Yes.

Q. Now that—did it come drifting in there, later on?

A. No, sir, that came ashore all—in perhaps two or three hours.

Q. All of the wreckage that you know anything about, of the Noble was what came drifting in on Wednesday morning, April 29th, there along near Minnesota Point?

A. Right on Minnesota Point.

Q. During a period of about two hours?

A. Two or three hours.

Q. Two or three hours?

A. Yes, sir.

Q. And the three pieces that you found was on the next day, Thursday, April 30th? that you told about?

A. Yes, sir; that is all.

Q. Now tell me, give me an idea as to how much wreckage was found on Wednesday on Minnesota Point, and what *is* was?

A. Well, it is rather hard to give an idea of the quantity because a great many of those hatches were smashed up in all sorts of pieces. There were several that was not smashed, but the number I could not say. There was probably 7 or 8 of them; there might have been more or might have been less. I did not take any record of those things.

Q. Of the hatches?

A. Of the number of hatches. There was a good many of them broke up. There was a strong back or two—I don't know whether that is the right term for that, that goes across the hatch. There was a small flag pole. Now that is all I saw myself. The other things I did not see.

Q. Was there a lot of it you did not see, as you understand it?

A. I understand there was considerable life preservers, a life raft and some pillows:

Q. Some pillows?

A. Yes, sir. That is all I can remember now that I heard of, but I did not see those things.

Q. Do you usually find more wreckage than this, or did you tell me you had no experience?

A. We never had a wreck like that before.

Q. You never had a wreck from which you picked up the wreckage?

A. Yes.

Q. You would not be able to answer that?

A. No, sir.

424 The Court: This boat could not have gone down there without leaving some other wreckage?

Mr. Leckie: If your Honor please, she is solid steel except the hatches and strong backs; there is nothing very much to float.

The Court: There is lots more cabin.

Mr. Leckie: The cabin was steel, your Honor. The doors and hatch covers were the only things.

The Court: What was this corner that you told me about?

Mr. Leckie: That was some interior cabin work.

A. It looked like the corner of the roof of the house.

The Court: That is what I understood. Was not the roof of wood?

A. It was covered with canvas. There was a piece of canvas attached to it, painted kind of gray or lead color. I don't know whether that was from her or was not.

Mr. Leckie: I hear these gentlemen here suggesting that would probably be the corner of the bridge.

The Court: That is very probable.

Mr. Leckie: Can I ask a question, your Honor, to get it into the record? Is the cabin roof and cabin all steel?

Mr. Gaskin: I don't know. I think the upper cabin was wood, up above the poop deck.

The Court: Finish up with this witness, Mr. Leckie.

By Mr. Leckie:

Q. Just one question Captain. When you started out with the surf boat——

A. Life boat.

Q. (Continuing:) I understood you stood off to the southward and then to the northward, back and forth across the lake?

A. Yes, sir.

Q. At that time anyway that would indicate that you did not know just where you would find anything. You might find it off
425 somewhere there in a northeasterly direction?

A. Of course I knew it was out in that general direction some where.

Q. And you did not know whether you would find it toward the south shore or the north shore?

A. No, sir, we did not know where we might find it.

Q. Was it not a fact that at that time your idea and the prevalent idea around Duluth, — that she had gone down not very far off shore there?

A. Well at that time it was—I had not heard a great deal of talk about it.

Q. What was your idea at that time about it?

A. I could not say. I did not know that the boat was due in Duluth until I made inquiries, after finding this wreckage; I went up to the tug office and they told me she was due in Duluth with a load of rails. I made up my mind immediately she was gone.

Q. Right in that connection: Did you not think to yourself that the sinking had occurred not very far off Minnesota Point?

A. Well, I don't remember just what I thought at that time.

Q. That is all.

Mr. Leckie: If there is anybody in the court room that does know whether the cabins are of wood or steel, let us find out.

Captain Sauers: The cabins were all steel.

The Court: Do you want Captain Sauers sworn?

Mr. Hill: No. That is entirely satisfactory.

Mr. Laws: If your Honor please, we do not want it to appear that Captain Sauers was called on our case. I understand it was an inquiry by Mr. Leckie of Captain Sauers who happened to be sitting in the court, on the respondent's case.

The Court: Yes.

Mr. Laws: May that appear in that way, your Honor?

The Court: That is the situation. The record may show that. We will have him sworn if you want him.

Mr. Laws: No, your Honor. I want it to appear that Mr. Leckie called upon Captain Sauers for that inquiry and made it.

The Court: That is the situation.

426 PETER E. C. RICHARDSON, after being duly sworn on behalf of the claimant testified as follows:

Examined.

By Mr. Laws:

Q. Mr. Richardson, you are one of the light keepers at the piers in Duluth, are you?

A. Yes, sir.

Q. That was your position in April, 1914?

A. Yes, sir.

Q. You have been there how many years?

A. Just about 7 years.

Q. 11?

A. About 7 years; just about 7 years up to now I mean.

Q. And you had been there about 6 years in April, 1914?

A. Yes, sir.

Q. And your duties are similar to those of Mr. Payer, to take turns on watch, to watch for the lights and put them out and light them again?

A. Just about the same; just the same.

Q. And were you on watch on the morning or the night of April 27th, 1914, and the morning of April 28th, 1914?

A. Yes, sir.

Q. What hour did you come on watch?

A. I went on watch at 12 o'clock; midnight.

Q. And you went off watch at what time that morning, the 28th?

A. 4 o'clock in the morning.

Q. Were you out there at any time so you could give a judgment as to the weather?

A. Yes, sir, I was on the pier.

Q. You were out on the pier?

A. I was not out on the end of the pier, but I was on the pier.

Q. You were on the pier?

A. Yes, sir.

Q. Tell his Honor what the condition of the weather was, as regards the weather between the time you went on watch at 12 o'clock in the night and the time you went off watch at 4 o'clock in the morning—

The Court: 4 o'clock.

By Mr. Laws (continuing):

Q. 4 o'clock the morning of the 28th of April, 1914?

A. How is that?

Q. How was the weather?

A. The wind was from the northeast, and it was raining.

Q. Was it a strong wind or medium wind or hard wind or a light wind?

A. It was about half way; it was not strong, but it was not—

427 Q. It was not a strong wind?

A. No, sir, it was not a strong wind at that time.

Q. Did it freshen up at all during your watch?

A. Yes, freshened up toward the last.

Q. At 4 o'clock in the morning you went off watch, did you?

A. Yes, sir.

Q. And turned in?

A. Yes, sir.

Q. Was the weather bad or anything unusual at that time?

A. No, sir.

Q. Was there any water coming over the pier at that time?

A. No, sir.

Q. Now there are tunnels on one or both of the piers, are there?

A. Yes, sir.

Q. Are they on both or only one?

A. They are on both piers, the tunnels.

Q. And those tunnels are for what purpose?

A. They are for going out on the end of the pier in stormy weather.

Q. Have you ever gone out in them?

A. Yes, sir.

Q. How frequently in your experience of six years have you gone out in the tunnels under the pier, about?

A. I think on an average of twice a year.

Q. About twice a year?

A. Yes, sir.

Q. Do you have more or less frequent storms in the spring and fall of the year at Duluth?

A. Yes, sir. That is when we have the storms.

Q. There have been quite a number of those storms while you have been there in the spring and the fall?

A. Yes, sir.

Q. Severe ones. Have you had severe storms there in Duluth during the spring and fall?

A. Yes, sir.

Q. When did you get up again after you turned in at 4 o'clock the morning of the 28th, what time?

A. I got up about 8 o'clock in the morning.

Q. How was the weather then. Had there been any change in it?

A. Yes, sir. There was a larger sea, and it was washing over the pier at 8 o'clock.

Q. Had the wind increased any?

A. I don't remember. I think it had.

Q. And as the day went on did the wind and the waves get worse?

A. Yes, sir.

Q. They got worse. What time of the time, about what time did the storm reach its height, in your judgment?

A. The storm was at its height towards the afternoon of the 28th.

Q. The 28th. Cross examine.

428 Cross-examination.

By Mr. Leckie:

Q. If the weather bureau showed 64 miles an hour at 6 or 7 o'clock in the morning of the 28th, would you say that was a strong wind or a heavy wind?

A. Yes, I should think it was quite a strong wind.

Q. That is quite a strong wind?

A. Yes, sir.

Q. That is about the only way you would describe it?

The Court: He was asleep at that time, as I understand it.

Mr. Leckie: Yes, your Honor.

A. Yes.

Q. That is all, your Honor.

Mr. Laws: That is all.

Mr. Leckie: Before you gentlemen close your case, I want to

state to the court that I observe a witness sitting back here who was on the Morrell, in this vicinity at that time. A statement was taken from him a day or so after. In pursuance of that statement I spoke with him in Cleveland sufficiently to find out he had arranged to come here for the other side, so I dropped him. He is here in court, if the court would like to hear him. I just suggest he is here.

Mr. Laws: If the court would like to hear him we have no objection, if the court would like to hear him.

The Court: I think under the circumstances I will call him. I prefer to err on that side.

ERNEST H. POLLOCK, after being duly sworn by the court testified as follows:

Mr. Laws: Shall I examine him, your Honor?

The Court: I do not care to make any request; just as you feel about it.

Mr. Laws: We will do it, your Honor.

By Mr. Laws:

Q. What is your business?

A. Pilot on the Great Lakes.

129 Q. What license do you hold?

A. Pilot's license.

Q. How long have you held a pilot's license?

A. Four years.

Q. Were you on the steamer Morrell in April, 1914?

A. Yes, sir.

Q. In what capacity?

A. Second mate.

Q. Where was your steamer during the night of the 27th and 28th of April, 1914?

A. She was between Eagle Harbor and Duluth, and in Duluth Harbor.

Q. What time did you go on watch on the steamer, if at all, during that night?

A. We went on watch at 6 o'clock the evening of the 27th.

Q. 6 o'clock the evening of the 27th. Were you the navigating officer at that time? Were you in charge of the ship?

A. Yes, sir.

Q. And when did you go off watch, Captain?

A. The next morning at 8 o'clock.

Q. You stayed on from what time until what time?

A. 6 o'clock at night until 8 o'clock the following morning.

Q. Where were you in the vicinity—when were you in the vicinity of Devil Island?

A. At 10:20 the night of the 27th.

Q. About what speed was your ship making?

A. A little better than 11 miles.

Q. Were you light or loaded?

A. Loaded.

Q. With what?

A. Coal.

Q. How much coal did you have on?

A. Between 8 and 9,000 tons; a light load.

Q. Your boat is about how long a boat, is she?

A. 602 feet.

Q. What is her registered tonnage, do you know?

A. A little better than 7200 gross.

Q. Did you pass the Lakeport at any time during the night?

A. I passed steamers. I don't know whether it was the Lakeport or not.

Q. You passed steamers?

A. Yes, sir.

Q. What time did your ship arrive at Duluth on the morning of the 28th?

A. We passed in the piers at 5 o'clock the morning of the 28th.

Q. Did your ship have any difficulty in navigating that night?

A. No, sir.

Q. How was the sea running?

A. The sea was running from the northeast.

Q. How was the wind running?

A. The wind was fresh at Devil's Island; freshening up as we got along to Duluth, quite a gale at Duluth.

430 Q. Did you take the ship in or somebody else?

A. No, sir. The mate took the ship in.

Q. Did you have any trouble to get into Duluth when you got there?

A. No, sir.

Q. Did you see the lights at Two Harbors that night?

A. Yes, sir, had a bearing at Two Harbors.

Cross-examination.

By Mr. Leekie:

Q. I understand, Mr. Pollock, there was some place along on that voyage you saw some lights, and afterwards lost them?

A. Yes, sir.

Q. Tell the court about that?

A. I took a bearing on Two Harbors just before 2 o'clock, a four point bearing. I noticed two vessels, just clear of the lights at Two Harbors, one following the other, little steamers. I kept watch of those at different times. Along about the time we got abreast of Knife Island the mate come up in the pilot house; he had been down in the captain's room. The captain was sick. I told him there were two little fellows inside of us, going up. He looked over that way and he said, no, there is only one. I said there were two there a minute ago. And I looked again and I could not see only one of the vessels passing up. I told him I think probably he has gone back to Two Harbors or his lights have gone out. We kept track of the other fellow, and followed the other fellow into Duluth.

Q. Now, that was down off Knife Island, you say?

A. Yes. We were about abreast of Knife Island.

Q. That was quite a little ways away from the vicinity where another man saw the lights disappear?

The Court: Just show me where you were, you say?

A. We were here (referring to chart). We first picked up the lights with a four point bearing off Two Harbors. I seen him disappear when we were about abreast of here. (Indicating on chart.)

Mr. Hill: Abreast of Knife Island?

A. She was dropping behind and the other fellow had gone off and was probably six miles ahead of us. We were about here (indicating on chart).

By Mr. Leckie (continuing):

Q. Now what do you say about the wind off there at the time that you lost this fellow's lights?

A. It had been growing fresher. It was not quite a gale at that time. It was not as strong as it was in Duluth.

431 Q. Do you remember giving a statement in Duluth, a written statement in this matter, some short time after it occurred?

A. Yes, sir.

Q. Didn't you there state you would judge the wind was blowing as much as 70 miles an hour?

A. I made a statement.

Q. Let me read this first (reading):

"When abreast of Two Harbors, I observed the lights of two vessels upbound in shore from us, well in shore. The vessels which were inshore were about five miles apart. We continued up, and occasionally I could see the lights of both vessels inshore from us. At this time there was a gale blowing from the northeast with a heavy sea. I should judge the wind was blowing as much as 70 miles an hour."

Did you make that statement?

A. I helped make the statement. The lawyer made that statement it was blowing 70 miles an hour, wasn't it, and I said I hardly thought so. He said about there. I said probably around there, somewhere.

Q. That is your signature, Mr. Pollock?

A. Yes, sir.

Q. And that is the statement you made at that time?

A. Yes, sir, that statement was read to me after it was made.

Q. It was read to you with that 70 miles an hour in there and you put your signature there and swore to it?

A. If it is in there. I didn't see it myself.

By Mr. Hill:

Q. Captain Pollock, do you know whose handwriting this statement is in?

A. No, sir.

Q. It is not yours?

A. No, sir.

Q. Where was this statement taken, do you recall? Was it on the boat or where was it?

A. That is the statement—when that statement was taken from me, it was taken on board the boat in Duluth Bay.

Q. It seems to have been taken by H. R. Spencer. That is the same Spencer that took statements from other witnesses up there?

A. I do not know his name.

Q. Did he tell you he was representing the owners of the Steamer Noble?

A. Yes, sir, representing Mr. Francombe.

Q. He said he was representing Mr. Francombe?

A. Yes, sir.

The Court: Did the party who took the statement act as a notary?

432 Mr. Hill: Yes, your Honor, he acted as notary and read it out.

Mr. Leckie: Inasmuch as it has been referred to here, I suppose it had better go in.

Mr. Hill: Do you offer that, Mr. Leckie?

Mr. Leckie: Yes.

Paper above referred to was marked Exhibit 40.

Examined.

By the Court:

Q. You said he was a lawyer. Did you know him before he came to you?

A. No, sir, I never seen him before.

Q. How did you happen to give a statement?

A. After the Noble—the wreckage of the Noble was found up there, I had gone ashore and I told the fellows there in the tug office about this light disappearing out there that night, and they must have notified somebody. This lawyer came over on the boat a couple of days after that and asked the mate and I those questions.

Q. What was said about the wind? Now I want you to tell just what was said about it?

A. Well——

Q. I see what is in the written statement, but what talk did you and he have about the wind?

A. Well, he said to me, he said the wind was probably blowing 70 or 75 miles an hour, wasn't it?

A. I said no, I hardly think it was that strong. Well he said it might have been around there somewhere. I said it might have. That was the substance of that.

Q. How hard do you think it was blowing?

A. Well, since I have heard the weather reports I judge I am biased, I suppose.

Q. What would have been your best judgment at that time as to what it was blowing, if I had not asked you the question in this way,

wanting to know the truth about it. What would be your best judgment. What would you say?

A. 40 or 50 miles an hour.

Q. Why didn't you tell him, when you signed that, that you would not sign it unless he put it that way?

A. I don't know. I was not very much interested at that time.

Q. I am asking you this because this come up so often.

A. I didn't think the statement amounted to anything.

433 The Court: Witnesses seem to make statements the way some one wants them to, as you say you did. Why is it that you sailor men will do that for them?

A. I suppose they try to exaggerate things, and the sailor man always does.

Q. What made you, in this particular case, let him do that?

A. I can't recall now whether I had any other reason.

Q. Did he pay you anything for this statement?

A. No, sir, there was not a cent.

Q. For your time or bother?

A. No, sir. He was only there about 15 minutes.

Q. What made you help him and give him what he wanted now instead of putting it just the way you wanted it?

A. I can't recall that I had any reason at that time; I knew none of the parties or the owners.

Q. Now as to signing the statement, did he have you raise your right hand and administer the oath in that way to you?

A. I don't remember whether I swore to the statement or not.

Q. How long did he stay?

A. I think he must have been there about half an hour probably.

Q. Did he have any talk with you about any mutual acquaintance that you had or mutual interests?

A. No, sir, not at all. I was working on deck there and he called me down to make this statement.

Q. Did I understand you that you went on watch from 10:20 that (Monday) night until you got into Duluth at 5 o'clock next morning?

A. I was on watch from 6 o'clock that night.

Q. Oh, 6 o'clock until 8.

A. Until 8 the following morning, yes.

Q. Was the captain on watch that night too?

A. No. The captain was sick. He took sick at supper time the night before, and he was very severely sick. He was not out of his room.

Q. You were doing what the captain ordinarily would do?

A. Yes, sir. I stood the mate's watch from midnight until morning.

Q. The mate stood watch the early part?

A. No, sir, the mate stood no watch; he was down taking care of the captain. He was with him all night.

Q. Taking care of the captain?

A. He was with him all night from the time he took sick.

Q. You stood watch for both of them that night?

A. Yes, sir, both of them that night.

434 Q. It was not because it was a bad night?

A. No, sir; no, sir; no reason whatever.

Q. I didn't know but you were all hands up on account of the storm?

A. No, sir, just the usual men besides myself, the usual number of crew.

Q. The first mate was not sick?

A. No, sir.

Q. Did you call him at any time during the night?

A. No, sir, I didn't call him at any time.

Q. Did you take her in?

A. No, sir. He took her in.

Q. How did he come out, how did he find it out? Did you send for him?

A. No, sir, he came up.

Q. What time?

A. Probably about 20 minutes before we got to the piers.

Q. Did you make any entry in your log at all of the lights that you had seen?

A. No, sir.

Q. Which was the boat nearest to you, the one that you lost the lights of or farthest away?

A. The nearest one, the stern one of the two.

Q. How far do you think she was from you?

A. She must have been three or four miles inside of us, at Knife Islands, and probably 6 or 7 miles out.

Q. You were too far aft of her to see any colored lights?

A. Yes, sir, we could not see the colored lights.

Q. She was too far ahead of you. Well, could you tell by her lights, you could tell her course?

A. Yes, you could tell from her range lights.

Q. Did she change her course at any time, change her course at any time?

A. Not that I noticed, no, sir.

Q. Did you find out what boat it was that you followed into Duluth?

A. Yes, sir.

Q. What boat was it?

A. I ascertained at the tug office it was the Norwalk.

Mr. Laws: The captain who testified, she is that little wooden boat.

The Court: Was he asked whether there was any boat astern of him?

Mr. Laws: I don't remember. He was there a witness, your Honor.

Mr. Leckie: He said he left the Noble, the last he saw of the Noble was down by the Portage Canal. He started off to the northward.

435 The Court: He would see that boat astern of him?

Mr. Leckie: He might have. I don't know.

Captain Goodrow (recalled) for further examination.

By the Court:

Q. How far were you off Two Harbors when you were passing abreast of her?

A. About 5 miles.

Q. And how far off Knife Island when you were abreast there?

A. We would not be over 3 miles.

Q. You were steering practically the same course down by both places, were you?

A. Practically, yes.

Q. How long had you been on that particular course?

A. From Devil's Island. We were to the northward of the regular course from Devil Island to Duluth.

Q. You must have been a good ways north of there?

A. Yes, sir.

Q. From the time you were abreast of Devil's Island you had been taking that course?

A. No, sir, we were to the northward of Devil Island when we passed.

Q. You were to the northward of Devil Island when you passed?

A. Yes, sir. We were 6 miles off, if I recollect, off Devil Island.

Q. Where were you when you saw the boat astern of you?

A. Why there were lights astern of us all night. I could not tell what they were.

Q. Well, do you remember the last lights you saw astern of you, where you were?

A. Why, shortly after passing Two Harbors I went into my room. The mate reported a steamer passing us between Two Harbors and Knife Island, but I don't know what it was.

Q. But you were not on watch?

A. Not for an hour after we passed——

Q. Did you ever see any lights yourself at all after you passed Two Harbors?

A. No.

Q. Did you ever see any lights at all after you were abreast of Devil Island or north of Devil Island?

A. Oh, yes. There were lights behind us all the time.

Q. As I understand you, you never saw any lights which disappeared in any way?

A. No, sir.

Q. Anything to call your attention to it at that time?

A. No, sir.

436 Mr. Laws: The mate of the Morreil is in the court room; if your Honor would like to hear him, we will call him.
The Court: All right. I will be glad to hear him.

SAMUEL BRINES, after being duly sworn by the court on behalf of the claimant testified as follows:

Examined.

By Mr. Laws:

Q. Captain, where do you live?

A. St. Clair, Michigan.

Q. What license do you hold?

A. Master.

Q. How long?

A. Five years this spring.

Q. How long have you been a sailor, a sea man, following the sea?

A. About 18 years.

Q. All on the Great Lakes?

A. Yes, sir.

Q. Were you first mate of the steamer Morrell in April, 1914?

A. Yes, sir.

Q. During the night of the 27th and 28th of April, 1914, in what vicinity was your steamer?

A. Well, along about Devil Island, along in there.

Q. Were you on watch that night at all?

A. No, sir, I was not.

Q. You were not?

A. No.

Q. What were you doing that night?

A. I was taking care of the captain, who was sick.

Q. He was sick?

A. Yes, sir.

Q. Who was in charge on the bridge?

A. The second mate.

Q. The second mate. Captain Pollock, the man who has just been on the witness stand?

A. Yes, sir.

Q. You had nothing to do with the navigation of the ship?

A. No, sir.

Q. You were below, attending to the captain?

A. Yes, sir.

Q. What time did you arrive at Duluth about?

A. 5 o'clock in the morning.

Q. Who brought the ship in?

A. I did.

Q. Did you have any trouble to bring her in?

A. No, sir.

Q. About how far out were you when you came on the bridge and took charge?

A. Five or six miles out, I should judge.

Q. Cross examine.

437 Cross-examination.

By Mr. Leckie:

Q. Your boat is one of the 550 foot type or 600?

A. Yes, sir, 602 feet.

Q. A fine big ship in every respect?

A. Yes, sir.

Q. Mr. Pollock said she was light loaded?

A. She was loaded, drawing about 17-6 or 17-8.

Q. With coal?

A. Yes, sir.

Q. That would be light loaded?

A. It would be, yes, but that is all she could take.

Q. That would be in good condition for a sea way for that type of boat?

A. Yes, sir.

Q. You were some time attending to the captain and along about two or three o'clock in the morning, was it, that you came up on top of the pilot house?

A. Yes, sir.

Q. And you and the second mate had some conversation there did you?

A. Yes, sir.

Q. Will you tell the court what it was?

A. I asked him whether he had seen anything. He said he saw the Two Harbors lights. He said there were two fellows coming up on the inside of us, to the northward of us. We stood there talking a few minutes, and I picked up the glasses, and I could see a fellow away ahead of us, four or five miles to the northward. Then I looked along the shore to see whether I could see the other fellow, and I could not see his lights. I said to the second mate, I said, I don't see anything inside of us here Ernie. He took the glasses then and he said it is funny; he said I was looking at his lights just before you came out. He said I don't see them now.

By Mr. Leckie:

Q. Then you were about abreast of Knife Island?

A. Along about there, yes.

Q. Have you given any estimate of the wind velocity at that time?

A. Well, that is hard to tell. The wind was after us; and it is almost hard to judge the wind when it is after you in that way.

Q. You did state, didn't you, that it was a northeast gale with a heavy sea?

A. Yes, sir.

Q. And you stated that, a few days after that to the same Mr. Spencer at Duluth?

A. I could not say what his name was.

Q. It was to a man who came down there and inquired of you about it, and who wrote it down?

A. Yes, sir.

Q. And you signed it?

A. Yes, sir.

438 Examined.

By the Court:

Q. How far from Knife Island, abreast of Knife Island, is it into Duluth?

A. I think it is along about 19 miles; 19 or 20.

Q. What is your speed?

A. We were making a little better than 11 miles.

Q. Did you keep up full speed?

A. Until about 10 minutes of the piers.

Q. What time did you get in?

A. Got in 5 o'clock A. M.

Q. What time did you say it was you saw this boat,—that you came up there and heard about it?

A. It must have been about 3:20 or 3:30; along there.

Q. How can you figure it any earlier than a little after 4?

A. I don't understand.

Q. You say you got in at what time, at 5 A. M.?

A. 5 A. M. on the 28th.

Q. And that is figuring at what point?

A. The breakwater light. We always take our time going in.

Q. You said you kept full speed to within 10 minutes of the pier?

A. Yes, sir.

Q. And you were going 11 miles an hour?

A. Yes, sir.

Q. And 19 miles out there to this place would make it a little after 4—or 3, you are right. Now about this statement that you gave. Did I understand that you stated the number of miles in your written statement more than you actually believed it was?

A. The wind?

Q. Yes.

A. Well, he asked me, how much do you say the wind was blowing? I told him I didn't notice exactly. He went on—he said what was it, 50, 60 or 70 miles an hour? I told him I could not just tell him how much it was blowing. The wind was after us. He said, suppose I put down 70 miles an hour? I said all right. So he put that down. That was just the way of it.

Q. Why did you do that?

A. I don't know. I didn't know how much the wind was blowing and I could not tell. We have no way of telling. It was breezing up pretty fresh.

Q. What makes you sign a statement in which he would put that in?

A. Well, I could not tell how much it was blowing.

Q. Did he swear you to your statement?

A. I don't believe it; no, sir.

Q. Didn't have you raise your hand and administer the oath to you?

A. I don't remember that; no, sir.

439 Q. Did you understand it was something you were taking an oath and swearing to be true?

A. Yes, sir.

Q. How?

A. Yes, sir.

Q. When you signed that?

A. Yes, sir.

Q. You understood then it was in the nature of an oath? Why would you do that? Why would you swear to that if you did not know? Why would you swear?

A. I don't know why I done it. He asked me how the wind was, and I told him the way and he went on—he said 50, 60, 70 miles an hour. He said suppose I put down 70 miles. All right.

Q. Would you have let him put down 80 if he wanted to?

A. I knew it was not that strong. I knew it could not have been.

Q. That is all.

Examined.

By Mr. Leckie:

Q. Just a moment. Your impression now is you did take oath at that time the wind was 70 miles an hour?

A. Yes, sir.

Q. Let me read this to you. This is your signature, is it not? (showing statement to witness).

A. Yes, sir.

Q. You keep track of that, and I will read from this (reading):

"I came on the pilot house of our vessel at about half past three of April 28th, 1914. The Morrell was then about 3 miles above Knife Island on Lake Superior. There was a gale blowing at that time from the northeast with a heavy sea."

Do you see anything there about 70 miles an hour?

A. No, sir.

Q. That merely states there was a gale blowing with a heavy sea?

A. Yes, sir; it does.

Q. And that was correct, wasn't it?

A. What is there.

Statement above referred to then marked Exhibit 41.

The Court: Were you there when the second mate signed his statement?

A. I don't remember.

Mr. Hill: If your Honor please, we offer in evidence a report showing the number of gales for the last 10 years during the month of April, tabulated.

The Court: That will be Exhibit 42.

(Report above referred to then marked Exhibit 42.)

440 Mr. Hill: Also certified copy of the government records of winds velocities for Duluth the last 10 years during the month of April.

(Statement above referred to marked Exhibit 43.)

Mr. Laws: If your Honor please, we now move to strike from the record the evidence taken under cross examination of William A. Sproull. I think it was at Pittsburgh, regarding the insurance upon the cargo; also move to strike from the record that which was taken in pursuance of that, I think it was Mr. G. C. Morris, now employed with the Insurance Company of North America, together with the exhibits which he produced, and the correspondence between our company, the Cambria Steel Company, and the Insurance Company of North America, of the policy, the certificate and the letters concerning the advance, and the receipt under which this advance was made.

I think it is proper to make that motion now in order that the matter may be clearly upon the record.

The Court: What do you say about that?

Mr. Masten: We think it ought to remain in the record, but I don't care to argue it now any more than we did when the question was first raised. We will say the witness testifying, the witness had entire charge of that matter, and testified he did make claim against the Insurance Company of North America, and that the basis of this was loss by peril of the sea. We claim that is a declaration against interest. In explanation of that, they show they did not make a payment under that, but made a loan. Now whether that destroys the legal effect of it, if it had any before, is a question that might become material. We do not consent to the motion, but do not care to argue it in detail.

The Court: It is in the record, and I will leave it in the record, overruling your motion. You may have an exception to that, and I will take care of the matter when I dispose of the case.

Mr. Laws: Yes, your Honor. That closes our case.

The Court: Is there any sur-rebuttal?

Mr. Canfield: No, your Honor.

441 The Court: The proofs are closed. It is ten minutes to one. What about the argument, gentlemen? How much time do you wish? What have you to suggest?

Mr. Laws: I would suggest that we adjourn until 2 o'clock, and we will go on at 2 o'clock. We would like to close the argument today, without any question. I think we can do it between that time and the time court adjourns.

Court and counsel then agreed to adjourn and take up the arguments at 2:15 P. M.

Testimony of Capt. William Rinn.

Wednesday, February 24, 1915—9:30 a. m.

Captain WILLIAM RINN, after being duly sworn on behalf of the court, testified as follows:

Examined.

By the Court:

- Q. Where do you reside?
A. Chicago.
Q. What street and number?
A. 1459 Cullen.
Q. What is your occupation?
A. Master of steamers.
Q. How long have you followed the lakes in sailing?
A. 20 years.
Q. All on the Great Lakes and rivers?
A. Yes, sir.
Q. How old are you?
A. 36.
Q. And since you were 16 years old you have sailed the lakes?
A. Yes, sir.
Q. How long have you had master's papers?
A. I think about seven years.
Q. That you have had papers?
A. Yes, sir, master's license.
Q. How long have you been master of a vessel?
A. Five seasons and a half.
Q. Just tell me the boats you have been in as master.
A. In the Steamer Lambert all the time.
Q. And what kind of a boat is the Lambert?
A. She is a canal size boat, single deck boat.
Q. How long is she?
A. I believe her dimensions are 241 feet keel and 41 feet beam and I believe 255 feet over all.
Q. And her molded depth?
A. Well, I could not say exactly, about 16 or 18 feet I should judge.
442 Q. Where did the Lambert lay up the winter of 1913 and '14? a year ago? Where was the Lambert?
A. In Milwaukee.
Q. You took her the first trip last year?
A. Yes, sir.
Q. What time did you leave Milwaukee?
A. April 22nd at 10:45 P. M.
Q. Loaded with what?
A. Light.
Q. For where?

A. Duluth.

Q. When did you reach Duluth?

A. April 26th at 9 A. M.

Q. Did you get a load at Duluth?

A. Yes, sir, between Duluth and Superior; I loaded at both places.

Q. With what?

A. 50,000 bushels of wheat and 29,000 bushels of barley.

Q. Making a total tonnage of how much?

A. I just forget the record of the tonnage.

Q. When did you get loaded?

A. We got loaded on April 27th at about ten o'clock in the evening.

Q. What dock were you at when you were loading?

A. We finished loading at the Great Northern Elevator at Superior.

Q. When did you leave the dock?

A. We left that dock about 11 P. M.

Q. Which entrance to the harbor did you leave by?

A. Duluth.

Q. What time did you pass the light on the piers at Duluth?

A. April 27th about 11:45 P. M.

Q. What was the wind and weather at that time?

A. The wind was northeast.

Q. How about the weather?

A. Well, there was quite a bad gale blowing when we left.

Q. How much of a wind?

A. Well, I could not say just exactly the velocity of the wind.

Q. Can you give me some idea?

A. I should judge it would be around in the neighborhood of 25 or 30 miles an hour.

Q. How was the sea at that time?

A. There was quite a big sea.

Q. Can you give me any more definite idea about that?

A. It was what I would consider quite a heavy sea running when I left.

Q. How long had the wind been fresh and from the northwest?

A. I could not say. I don't remember. I didn't take notes.

Q. What course did you take when you left the pier?

A. I shaped my course to go down the north shore.

443 Q. Can you tell me about what that course would be?

A. (Referring to chart.) It would be just about on that course that I left.

Q. That would be northeast by east $\frac{1}{8}$ east?

A. About that, yes, sir.

Q. Where were you bound for?

A. Montreal.

Q. Why were you going down the north coast, the usual course would have been Devil Island, would it not?

A. Yes, sir. I figured if the wind came any more from the northward I would be on the north shore.

Q. Now, Captain, your later came back to Duluth?

A. Yes, sir.

Q. What time did you get back to Duluth.

A. I got back about six o'clock in the morning.

Q. That is the morning of the 28th?

A. Yes, sir, between five and six.

Q. That is Tuesday, April 28th, that you got back there?

A. Yes, sir.

Q. Now, Captain, in your own way I wish you would just tell us where you went and what you saw, if you saw any boats, tell us about it and in your own way tell us what occurred from the time you left Duluth until you got back there. And before you do that, let me ask you, have you ever talked with anyone connected with either side of this lawsuit about this matter at all?

A. No, sir.

Q. No one?

A. No.

Q. You never talked with any lawyer about it?

A. No, sir.

Q. And you have not talked with me since you have been here?

A. No, sir.

Q. Has anyone ever inquired of you about what occurred up there?

A. No.

Q. Never gave any statement to anyone?

A. No, sir.

Q. Then this will be the first time you have told anyone connected with this lawsuit about it?

A. Yes, sir.

Q. I wish you would begin and tell us everything that occurred that night as far as you can; how the storm was, how the wind was, if you saw any boats out there, tell us all about them.

A. I got loaded, as I say, about 10 o'clock, and when I got loaded the weather looked very bad; I called up the weather bureau office and they said there wasn't any bad storm indicated and as near as I can remember, they told me the weather for the next day was to be fair and warmer, but the wind was receding and there was a
444 big sea on when I left, but I figured if we were going to get better weather the sea would be running down all the time; about three o'clock in the morning I thought the wind was blowing harder and the sea was getting bigger or else we were running in a bigger sea at that locality and at that time according to our log we had run about 11 miles, and I figured that was not making any time, and it was turning a little bit foul, and we were not making anything, and there was a good harbor in plain sight and close by, and I figured that was the best thing to do, to go back for economy's sake and safety and while we were handy to a good harbor; about three o'clock in the morning I turned around and got back to Duluth between five and six o'clock. I went in and lay at anchor in the bay until the wind had practically died out.

Q. When did you go out again?

A. We left on April 30th at 1 A. M.

Q. That is Wednesday night or Thursday morning?

A. That was on April 30th. I don't remember the day.

Q. Did you see any boats that night?

A. No, sir, I didn't see any while we were out.

Q. Didn't see any lights?

A. No, sir.

Q. Never saw a light?

A. No, sir. Shortly after I left Duluth it began snowing and I could not see very far.

Q. Did you ever get far enough down so you saw Two Harbors lights?

A. No, sir.

Q. Didn't see those?

A. No, sir, I don't think I was down far enough to see them.

Q. There were no other lights on the north shore before you got to Two Harbors?

A. No.

Q. Did you get out of sight of Duluth lights?

A. Oh, yes.

Q. How far down had you got when you got out of sight of Duluth lights?

A. I could not say the exact distance, but I don't think it was—when I left Duluth you could not see over three or four miles, as near as I can remember; when I turned around I don't think I could see much more than half a mile; it was snowing harder when I turned.

Q. At what time?

A. About 3 A. M.

Q. You think you were about how many miles out from Duluth?

A. I figured I was about 11 miles when I turned.

Q. Just about half way to Two Harbors?

A. Yes, sir.

Q. But you hadn't seen anything to tell you where you were
445 except your log and your course?

A. Yes, sir.

Q. That is all you know about where you were, by your log and your course?

A. Yes, sir.

Q. How did you turn around? Tell us about that.

A. I turned around on a port wheel.

Q. On a port wheel?

A. Yes, sir.

Q. Heading around to the starboard out into the lake?

A. Yes, sir.

Q. Did she make a quick turn around?

A. Not very quick.

Q. Did you put her wheel well over or hard over and come right around or did you change your course?

A. No, sir, I put her hard over and notified the engineer, and when I got ready I gave him the signal to work her as hard as he could work her.

Q. Then you took the same course the other way back into Duluth?

A. Yes, sir.

Q. As I understand you, you didn't see any boat on the way out or coming back?

A. No, sir.

Q. What lights did you show?

A. The usual regulation lights, one headlight, two sidelights and the range light, and small bright light aft.

Q. You didn't have any trouble with your dynamo?

A. Yes, sir.

Q. It didn't go out at any time?

A. No, sir.

Q. And you are very certain you didn't get down anywhere near Two Harbors?

A. Yes, sir, not more than 11 or 12 miles.

Q. Did you hear any fog signal from Two Harbors, or any whistle at all?

A. No, sir, I didn't hear any whistle at all.

Q. You didn't see any other boats trying to get in at Duluth?

A. No, sir.

Q. Did you have any trouble in getting in?

A. Not very much.

Q. Was your boat in danger at any time during the night?

A. Well, that would be a pretty hard thing to say. We had an awful lot of weather over there when we turned. I didn't consider there was any danger at any time in a sea way like that.

Q. Did you have any bulwarks on your boat?

A. No.

Q. No bulwarks?

A. No.

Q. How much freeboard did you have?

A. With a canal boat we can only draw 14 feet for the canal and would probably have between two and three feet out, for the canal load.

446 Q. Yours was a steel boat?

A. Yes, sir.

Q. How were the hatches?

A. They are wooden hatches.

Q. What else did you have on of wood except the hatches and the finishing down the inside, of course——

A. Well, of course the frames in the skylights is practically all the wood we have on our boat.

Q. As to seaworthiness, what do you say as to whether a boat—Do you know the Noble?

A. Why, yes, I have seen her.

Q. You have seen the Noble?

A. Yes, sir.

Q. How did your boat differ from the Noble except your not having bulwarks and she having bulwarks?

A. I don't know. She had a cabin up on deck as I remember it, and her houses were built up higher forward than ours was, and she had bulwarks, solid bulwarks on her.

Q. Yes, she had solid bulwarks with water gates, 3½ foot bul-

works; what do you say about bulwarks on a boat like that and in not having them, tell me what the difference is.

A. Well, I would think that a boat without the bulwarks would not hold water.

Q. You mean when she takes it——

A. She won't take it or keep it on her decks is what I mean.

Q. Then she is freer?

A. Yes, sir.

Q. You think a boat then is better without the bulwarks in a storm?

A. Well, I was never shipmates on a boat with bulwarks. I don't know how they would handle in a seaway.

Q. For a storm like that, how much freeboard on a boat like that ought there to be?

A. Well, that is hard to say. If we were loading a boat and knew we were going to have a storm, for a man's own safety he would probably want a light load on his boat.

Q. How much free board?

A. Well, boats like ours I would load them down decks to and would feel safe with them.

Q. Safe in a storm like that?

A. Yes, sir.

Q. If you knew you were going out in a storm like that?

A. Yes, sir, I would feel quite safe.

Q. You say quite safe. Do you think that is just as safe as with more freeboard?

A. Well, I would not pass an opinion on that; I think our boat should have them.

Q. Just as safe as though she had more?

A. Yes, sir.

Q. Well, what do you say if you had bulwarks?

A. Well, I could not pass an opinion on that. I have never
447 been shipmates on a boat with bulwarks; I don't know how the boat would act.

Q. How would that storm compare with other storms you have been out in?

A. I found it was about as bad as any I had ever experienced.

Q. When had you seen storms as bad as that?

A. Well, I could not state any particular time when I have seen a storm as bad as that. I consider that about as bad as anything I have run into.

Q. You say about as bad as anything you have run into; now if you can recall some other storms I would like to have you.

A. Well, I could not give you the exact date of any particular storm.

Q. I understood you to say you had been out loaded down to decks to and with a storm like that.

A. Yes, sir, I have been out in a storm in the neighborhood of 2700 and 2800 tons of ore——

Q. In a storm as bad as this one?

A. I would think it was about the same.

Q. And when was that?

A. That was about seven years ago.

Q. With this same boat?

A. No, sir, but in the same line.

Q. Are those boats all built about the style of this boat?

A. Why, none of our boats have bulwarks.

Q. None of them have bulwarks?

A. No, sir.

Q. Do you know of any steel boats that have bulwarks that are built to run down close to the water with little freeboard?

A. No, I don't believe I do; unless the Beattie, I believe she has bulwarks, as near as I can remember.

Q. What depth do you load your boat to in the summer time when you load with iron ore? Do you ever carry rails?

A. Yes, sir.

Q. Do you load out at different depths with rails than you do with iron ore?

A. Well, no—sometimes. It depends upon the cargo. Sometimes we can get only so much rails and that is all we can get, if we take all we can get we generally take a good load.

Q. What is the worst load to carry on the lakes?

A. Well, I don't know; I think ore would be quite a bad cargo.

Q. In storms you mean?

A. Yes, sir.

Q. How does that differ from rails?

A. Well, of course the ore would not be stored like rails. Rails are stored very solid. It is a very solid cargo.

Q. But those two are about the worst kind of loads you can
448 have?

A. I would consider rails one of the best loads.

Q. Better than grain or lumber?

A. I don't know as it would be any better than lumber.

Q. Well, you say iron ore is the worst. Now what comes between iron ore and rails?

A. I could hardly pass an opinion on that. I would consider rails a very good cargo.

Q. As compared with what?

A. With almost any cargo.

Q. With wheat?

A. Well, equally as good as wheat.

Q. Just as good as wheat you think in a storm?

A. Yes, sir, it is a cargo that could not shift.

Q. I mean about the weight; anything about that; having her weighted down in the bottom of your ship?

A. Well, I have found in my vessel—I have always considered you can handle rails about as well as you can handle wheat.

Q. How deep do you load your boat with ore?

A. Well, as near as I can remember, about 16-6 or 8, in that neighborhood.

Q. What about the mean draft?

A. That is about the average draft as near as I can remember.

Q. About the mean?

A. Yes, sir.

Q. About how much?

A. Between 16-6 or 8.

Q. How would you divide that up; how much would be aft when you started out and how much forward?

A. We figure probably four or five inches by the side.

Q. Now do you load any different with rails? You say sometimes you could not get a full load, consequently did not take that much, but when you could get a full load, would you load that different, to a different draft with rails than with ore?

A. No, we would put it down about the same.

Q. Then if you started from below with rails you would start with about 16-8 aft—or how?

A. Well, around about in that neighborhood.

Q. How much coal do you burn; do you take coal below for the entire round trip?

A. That is the way we have been running as near as possible.

Q. Boats practically all plan to do that?

A. I don't know what the other ones have been doing. That is what we have been doing.

Q. And if anything happens so that you use more than on the ordinary trip you coal somewheres before you get back?

A. Yes, sir.

Q. How much coal do you take from below for a round trip if you are going up from Conneaut to Duluth and back, how much coal would you take?

A. Well, on my boat I would take about 200 tons.

Q. How much of that would you burn on the up trip?

A. Well, on a good run, without any bad weather, I would figure as close as I remember, about 18 tons a day; between 16 and 18 tons in 24 hours.

Q. What did you figure to burn on the entire up trip as a rule, an average trip?

A. Well, you would have to figure that up.

Q. Well, how many days?

A. As I remember, about between three and four days.

Q. You would have a lot of coal left in that way of figuring; do you burn up about 100 tons going up?

A. That is the amount we would burn per day.

Q. You don't figure to have any left over, do you, when you get back?

A. No.

Q. How do you figure you would burn up 200 tons on that trip? How many days going up—about four days you say?

A. I would figure where I was going, about as long as it would take me to go there, and I would figure accordingly.

Q. When you start up you would figure about 16-6 mean draft you say, with a load of iron from below, and that would be divided up, how much aft and how much forward about?

A. Well, figuring around in the neighborhood of 16-8 or 9 aft and 16-7 forward or 16-6, around in that neighborhood.

Q. Now as you went up and burned the fuel out it would lighten her up behind, aft?

A. Yes, sir.

Q. About how much on a trip up do you think she would come out of the water?

A. From Conneaut to Duluth?

Q. Yes, sir.

A. My boat would come up about 10 inches.

Q. And coming up 10 inches aft she would go down how much forward?

A. About 3 inches.

Q. You would have your bow lower than your stern when you got into the head of the lake then?

A. Well, with a load of rails, about on an even keel. We would not be as particular as with grain.

Q. I wonder if I have got this the way you want it. Maybe I have misunderstood you. You say you would start out about 16-8 or 9 aft and 16-6 forward. Did I get that right?

A. Yes, sir, our boat would be 16-9 aft and 16 forward, not over 16 forward.

Q. Then even at that, you would have her by the head?

A. Yes, sir.

450 Q. If she came up by the head you would have her 16-9 and if she came up aft you would have a little less than 16; you would have her a little by the head?

A. Yes, sir.

Q. When you load a boat what do you go by, the draft? Do you keep watch of the draft or do you go entirely by the load you put on her?

A. The draft and the load.

Q. But which is the one that really decides you?

A. Well, her draft.

Q. That is what you really watch to see, how deep she is down in the water?

A. Yes, sir.

Q. Do you remember now what draft you put your boat down to?

A. No, I don't remember just exactly the draft. We have had her to.

Q. Is that about it?

A. That is about it as near as I can remember.

Q. Do you make any difference in the season of the year as to the draft you put her to?

A. No, sir.

Q. Not at all?

A. No.

Q. In the fall of the year you load just as you do in the summer?

A. Yes, sir.

Q. And in the spring you do?

A. Yes, sir.

Q. No change at all?

A. No, sir, I don't change any.

Q. Now with her loaded 16-8 or 9 aft about 16 forward when you start, how much freeboard would that give you?

A. Well, I never noticed how much that would give us. That would not give us—16-9 aft, that would not give us very much around about her No. 5 hatch, that is where the boat would be lowest; that would be almost decks to there.

Q. The record gives your boat 18 feet molded depth, as I understand it; do you know about that?

A. I know it was between 16 and 18 feet. I didn't know the exact figures.

Q. If it is 18 molded depth that would give you about a foot and a half or more than that of freeboard?

A. Yes, sir.

Q. If it is 18 feet molded depth it would give you more than 18 inches freeboard, would it not?

A. Yes, sir.

Q. At your lowest place?

A. Yes, sir, at No. 5 hatch, but I have had her closer to the water than that.

Q. How deep have you ever loaded aft and forward?

A. As near as I can remember we have been to 16-9 as near as I can remember, and that is about what we have loaded for small loads.

451 Q. 16-9 aft and less forward?

A. Yes, sir.

Q. And that would be when you started out?

A. Yes, sir.

Q. On a trip like that you think you would come out of the water about 10 inches aft and into the water about 3 inches forward?

A. That would be in about a four-day run.

Q. Which would mean a man decreases the draft about $3\frac{1}{2}$ inches?

A. Yes, sir.

Q. You have never sailed any of these single deckers with bulwarks?

A. Not in recent years. I did about 18 years ago in a wooden boat, a lumber boat.

Q. You didn't carry iron of any kind?

A. No, sir.

Q. That was a lumber boat?

A. Yes, sir, we carried ore, steel and lumber.

Q. That was when you were watching and wheeling?

A. Yes, sir.

Q. Did you observe how she shipped the seas so that you can tell me about how the boat worked?

A. No, I don't remember anything in particular about that. That was years ago.

Q. I think you said you thought when you went out that night the wind was somewhere around 20—

A. I should judge the wind would be around 25 or 30 miles an hour.

Q. Did it freshen up after that?

A. Apparently it freshened after that, for when I got farther down the lake there was more wind down there, more sea on, seemed to be running into a heavier sea in that locality.

Q. When did you think you had the highest, the heaviest sea?

A. A little while before we turned around we seemed to be shipping an awful lot of water, and the wind was increasing, and we were apparently running into a heavier sea, and we didn't seem to be making any time, and we were shipping a good deal of water and we thought it would be better to go back into the harbor.

Q. Do you have a life line on your boat forward and aft?

A. No.

Q. Did you have a line along the rail, where the ordinary bulwarks are?

A. We had a double wire.

Q. A double wire?

A. Yes, sir.

Q. How are your hatches fastened on?

A. With clamps and oak wedges. The clamp goes in the hatch and the wedge keeps it in place.

Q. Do they ever get loose in a storm?

A. I have never had one get loose in a storm.

452 Q. Are there any electric lights on your boat?

A. Yes, sir.

Q. How hard do you think the wind was blowing when you got back into Duluth?

A. Well, I would consider it blowing about the same, probably a little fresher.

Q. Now you estimate the wind at 30 miles an hour; do I understand you had never been out in a 30 mile wind before?

A. Well, of course, I am not much of a judge of the velocity of the wind. I would not be able to tell just what it would be blowing.

Q. Did you know what suit you were coming here to testify in?

A. Yes, sir.

Q. How did you know?

A. Captain Sullivan called me up.

Q. How did he know?

A. I believe he was notified. I don't know.

Q. You knew it was the Noble?

A. Yes, sir, he called me up and asked me to report in Detroit and to report to you.

Q. Did he tell you what case it was on?

A. The Noble case.

Q. Do you know how he found out?

A. No, sir, I don't.

Q. I thank you, Captain.

Mr. Hill: No questions, your Honor.

By Mr. Masten:

Q. In answer to one of the questions of the court the witness said that he gave the engineer a signal to let him know or that he

gave her a signal to turn around, and I would like to ask what was the special occasion of getting ready for that and why he rang up to come around.

The Court: All right, Captain, you may answer that.

A. When we are running in a heavy head sea sometimes the engineer will ease the engine down so it will be a little easier on the engine, and when we are going to turn around, we always, as a rule, let the engineer know, so that if anything should happen, if she would not come around, so that all hands will know.

Q. One other question. Your particular vessel, the Lambert, has a very straight sheer, hasn't she?

A. Practically straight, yes, sir.

Q. And your houses and crew's quarters are all down below?

A. Part way.

Q. And your closets are below, and matters of that kind?

A. Yes, sir.

453 Q. Do you know that sometimes in the fall of the year where your boat has practically solid bulwarks of ice, where you have the two wires to take the place——

A. Yes, sir, we have had quite a lot of ice on her.

Q. You don't know anything about the extent of sheer which the steamer Noble had?

A. No, sir, I don't know.

By the Court:

Q. How far is your wheel under water?

A. That would depend upon what we would be loaded with.

Q. You were loaded that night for the canal?

A. Yes, sir.

Q. How much were you drawing?

A. Drawing about 14-10.

Q. You can't figure on more than 14 feet at the canal?

A. Yes, sir, that is the Lambert——

Q. There is lots more water in the canal?

A. Yes, sir, there might be.

Q. But they won't let you smell the bottom through there?

A. Yes, sir, we figure that would be light enough so as not to touch the sills of the locks.

Q. Then you were about——

A. About 14-10.

Q. How far was your wheel out of water?

A. I believe the Lambert has about 12 or 14 foot wheel; I could not say just what size her wheel is, about a 12 foot wheel I believe, so it is comparatively well covered when she is loaded 14 feet in the canal.

Q. Was there any trouble about that wheel coming out of the water?

A. Of course it lifts in a sea and turns easier closer to the top.

Q. The farther you put the wheel down in the more she labors?

A. Yes, sir.

Q. And if you put her down too deep it will check down?

A. It takes more power to do that; the farther down you go, the more pressure it will take to drive the wheel.

Q. And the nearer it is to the top, the easier it runs?

A. Yes, sir.

Q. Is there any danger of getting up out of the water?

A. Well, jumping in a head sea, sometimes it will make the engine race.

Q. Did your engine race that night?

A. Well, when she came close to the top of the water they had to ease her down a little so that it would not hurt the engine.

Q. Were you bothered about that?

A. Myself?

Q. Your boat?

A. No, that is quite ruinable. The engineer watches his
454 engines in a head sea and if she is lifting out so she is racing he will ease her down.

Q. Which gives the most trouble, if you get her too deep or too near the surface?

A. Well, it would take more pressure to run her down, and if the wheel gets out of the water there would be no pressure on it at all.

Q. Did you have any trouble about that on your boat?

A. No, not in particular.

Q. What about the depth that a wheel ought to be in the water so as not to do that, is there any rule about that?

A. Well, there would not be any rule; the engineer generally watches his own engine, and if he finds she is racing too much he notifies us that he would have to ease her down or else throttle her.

Q. Who was the particular one that Sullivan & Company communicated with you?

A. Captain Sullivan.

Q. Did you go into the office there and see him before you came here?

A. Yes, sir.

Q. Did he tell you what particular things were in dispute over here in this matter?

A. No, sir, he just told me that the case of the Noble was on and he was notified to notify me to appear here as a witness.

Q. Then if he knew that we wanted to know about the force of the wind there did he tell you?

A. No.

Q. You didn't know we wanted to inquire about the wind?

A. No, sir.

Q. Well, I thank you very much for coming, but you may thank Mr. Sullivan and I will write him, however, a personal letter, and the attorneys in the case will see you about your expenses, but I personally want to thank you and Captain Sullivan for your coming here so promptly. After we got in the lawsuit we discovered

you had been out in the storm that night, in the weather, and I take it you were on duty on the mate's watch all night?

A. Yes, sir, I *left* the mate go to bed because they had been up loading and it was a very disagreeable night and I let them both go to bed, and I stayed up myself.

Q. Do you know of any boats that were out in the weather that night or hear of any there with you?

A. Yes, sir, the Imperial came into Duluth as near as I can remember, that same morning.

Q. Yes, we got track of her; any other boats?

A. That is all I know of.

Q. Did you see anything of the Norwalk?

A. No, I don't remember of seeing her.

Q. Did you see anything of the Lockport?

A. No, sir, I don't remember of seeing her.

455 Q. Which was the boat that went into Superior?

Mr. Hill: That was the Norwalk.

Q. The Norwalk did not go into Duluth.

Mr. Hill: She came into Duluth entrance but went down to Superior.

The Court: You have told us all you think of about that storm that night?

A. Yes, sir, I have told you all I know.

Q. Did you change your course at any time; you told us about starting out on a course and you put your wheel hard aport and back on it; did you run any other course?

A. Practically the same course. We tried her a little different but it was practically on that same heading.

Q. You at no time undertook to cross the lake?

A. Oh, no, it was on that same course.

Oral Opinion.

TUTTLE, J.:

The Steamer Benjamin Noble was built at the Detroit Shipbuilding Company's plant in 1909, and was 240 feet between perpendiculars or 255 feet over all, 42 feet beam and 18 feet molded depth. She was built for the so-called canal trade and for the particular trade of carrying pulp wood. The maximum draft for the Welland Canal, through which she was going to operate is 14-6. She had a speed of about ten and one-quarter miles an hour. She was a steel boat with steel houses and wooden hatches. She was what is known as very sheer, in that her deck raised very rapidly as you went forward from about the fifth hatch, being about 6 feet higher at her extreme bow than at the lowest point in her deck. Her deck was also crowned, being 10 inches higher in the middle of the beam than at the edge of the deck. It was intended that she would carry a
456 large portion of her cargo of pulp wood on deck, and her decks were correspondingly well and strongly constructed. She engaged in trade on the Great Lakes in the year 1909, and each year

thereafter, until the unfortunate trip in question, when she with the 20 men constituting her crew were lost on upper Superior.

During her entire existence she was owned by the Capitol Transportation Company and was managed by the managing agent of the Capital Transportation Company, Mr. Francombe of Detroit, Michigan, a man of many years of experience on the lakes, as a chief engineer on steamboats, and also of many years of experience as the managing agent of boats on the Great Lakes.

The local vessel agent at Cleveland for the Noble was Mitchell & Company, and she had local vessel agents in other lake ports.

Before navigation opened in the spring of 1914, the Cambria Steel Company of Pittsburgh, Pennsylvania, communicated with Hanna & Company of Cleveland, who are brokers for freight business, and advised them that they had 3,000 tons of steel rails which they wished to ship from Conneaut, Ohio, to Superior, Wisconsin, as soon as navigation opened in the spring. Thereupon the agent of Hanna & Company called up Mitchell & Company and asked them whether they could furnish them a boat to carry 3,000 tons of steel rails. Mitchell & Company communicated with Mr. Francombe, the managing agent of the Noble, and a contract was made between the Capital Transportation Company, represented by Mr. Francombe, and the Cambria Steel Company, represented by Hanna & Company, for the transporting of these rails on the Noble at a rate of 80¢ per ton.

Among the other duties entrusted to Mr. Francombe, as the managing agent of the Noble, was the duty of selecting a master for the Noble, and he selected for the season of 1914 Captain Eisenhardt. He had experience in boats somewhat similar to the Noble. While he had never been master of a ship, he had many years of experience in all of the minor positions, at the forward end of the ship, and he was well qualified for advancement from mate to master of a ship. He was not only recommended at this time to Mr. Francombe, but in advance of the season of 1913 he had made application to Mr. Francombe for a position, and was at that time well recommended.

457 So that no fault can be found with the Capital Transportation Company because of Mr. Francombe's selection of a master. To say that vessel owners were negligent because they selected for a master a man who had never been a master would make it almost impossible for men to advance in their work, and secure ultimately the highest position on a ship, that of master. I hold that the master of this ship was competent and qualified for that position. On the other hand, in considering this case and the relations of the parties, and the duties which the owners of the ship owed to the master and to the cargo, I ought to have in mind the situation as it was, viz., that the master of the ship was for the first time to take command of a ship, and more than that, for the first time he was to enter service on the Noble, never having served upon the Noble in any capacity.

So we start in with this well built and seaworthy ship at Conneaut, Ohio, with a master and crew qualified for their positions; with the owner of the ship having made a personal contract with the owner of the cargo to carry 3,000 tons of steel rails on the first trip of the season from Conneaut to Superior.

There is nothing in the situation to show that the Cambria Steel Company, or any of its agents, undertook in any way to select the ship. They had a cargo which they wished to transport, and they conveyed this information to those engaged in the trade of carrying on the lakes. The owners of the Noble learning of the freight to be carried, undertook with the owners of the cargo, to convey it from Conneaut to Superior and offered and contracted for the Noble as a suitable carrier.

The steel rails were brought to Conneaut in gondola cars. The captain was in charge of his ship. The men at the dock began to unload the rails from the cars on to the boat by means of a whirler. While that work continued the captain of the Noble called up Mr. Mitchell each day at 11 o'clock to let him know how the work was progressing. On Friday, April 17th, 1914, Captain Eisenhardt from Conneaut telegraphed Mr. Francombe, the managing owner at Detroit, as follows: "Will be loaded Saturday noon. Mitchell wants 3,000 tons to go if possible. Please advise." To this telegram Mr. Francombe promptly replied: "Think 3000 tons too much. Best take all you possibly can." Captain Eisenhardt did take 2951 gross tons of the rails, leaving one car, which would be, I take it, about 50 tons.

The Noble had wintered at Cleveland, and was only partially inspected at Cleveland before leaving for Conneaut; arrangements having been made that the inspection would be completed 458 at Detroit, in order to avoid delay at Cleveland.

The Noble left Conneaut Saturday, April 18th, reaching Detroit shortly before noon on Sunday, April 19th. She remained at the dock here at Detroit until Thursday morning, April 23rd, during which time her inspection was completed. While she was here at Detroit, Mr. Francombe was aboard of her several times, looking over the ship and cargo and talking with the captain, and he was familiar with the entire situation aboard the ship.

On Thursday, April 23rd, she continued her upbound trip, and we hear of her next at the Soo, where she was locked through the Poe Lock late Saturday afternoon, April 25. We next hear of her at two o'clock on the afternoon of Monday, April 27th, somewhere about 20 miles off Portage Canal. This would make her about a day late, considering the time she passed the Soo, provided she had at all times continued at full speed on her course. Nothing has been shown to explain why she should have been delayed the 24 hours. However, I take it that is not a matter of any importance in this law suit because when seen at two o'clock on the afternoon of Monday she was continuing on her course, evidently at her usual speed, and I can see no real importance that can be attached to the fact that she was 24 hours delayed at that time. Possibly it can be accounted for in this: That her barometer may have shown some evidences of the storm that was approaching or some other storm and she may have remained anchored until such time as she thought the weather conditions were more favorable. In any event there is nothing to assist us in deciding that matter, and as already stated, I know of no reason why it is of any importance.

As to what occurred thereafter, we are compelled to rely upon various bits of evidence for our conclusions, and of necessity, the particular things which happened to the Noble thereafter are shrouded in mystery and doubt. We do know that a heavy storm came on, beginning at about three or four o'clock in the afternoon of the 27th, gradually increasing in severity until the wind had reached its maximum velocity, about 7 o'clock in the morning of the 28th, and continued during the entire day of the 28th, and that on Wednesday morning, April 29th, pieces of hatches, a piece of oar, cordage and the life raft were washed ashore at Minnesota Point, between the Duluth and Superior entrances, giving unmistakable evidence that the Noble had been lost. None of the bodies of

459 the 20 men constituting the crew have ever been found. No additional portions of the wreckage have ever been found, except on Thursday, April 30th, the life-saving crew at Minnesota Point worked with their boat back and forth over the west end of Lake Superior and in their search they found, at a point about three miles off the north shore, and about 10 miles to the eastward of Minnesota Point, three pieces of wreckage, viz., a hook with a piece of wood attached to it, which evidently had come out of one of the cabins; a corner of something, which the witness described as a corner of one of the houses but later when informed the houses were all of steel, decided it must have been a piece of the bridge; thirdly, a piece of strong back from one of the hatches.

I would not want to be understood as feeling sufficiently positive about the exact time or place that the Noble actually went down, as to make a positive finding in that regard. I have given careful thought to all of the testimony, and to all of the elements presented to me in order to come to a conclusion in regard to that matter. No one of the particular bits of evidence offered are conclusive, but it does seem to me, taking all of them together, that we can be somewhat reasonably certain as to the time and general locality in which the final misfortune came. For example, the wreckage. No one would contend that from the location in which the wreckage appeared that it could be told with accuracy where the disaster occurred. I am satisfied that there is a backset to the water when the wind is sufficiently high to raise the water at Minnesota Point, and while that backset is probably not so great while the wind continues as it is when the wind goes down, there must be a backset there at all times when there is a northeast wind, and while that backset is probably below the surface of the water rather than at the surface, it is all uncertain and problematical. I doubt that the three pieces found on April 30th had ever been down to the beach at Minnesota Point, or that end of the lake. I am inclined to think that the wreck occurred somewhere to the eastward of where this wreckage was picked up on the 30th. We know of course that the wreckage which came ashore on the morning of the 29th at Minnesota Point came from the same place as the wreckage which was found on the 30th, ten miles down the lake. I am satisfied that however this boat might have been lost, that the pieces of hatch covers that have been described are accounted for by the blowing up of the hatches. I think it quite probable that a

hatch cover got loose and water went in the hatch and filled the
460 boat up and she plunger down at one end first. If this occurred
then the other end would likely to blow up. As water forced
itself into the boat, as she went down, the hatches at the other end
would be blown to pieces. The same would be true if in any way she
filled with water and went down. The fact that neither the life boats
nor any of the bodies of the crew were ever found leads me to think
that the Noble went down quickly while the men were all inside. No
wreckage was found except the things that wind and water would
knock off, like the life raft or cordage, oars and pieces of hatches
which could be blown up, and which were found. As to the pieces
from the cabin inside, that might be explained in different ways, and
it is impossible in matters of this kind, to explain all details. I am
satisfied the boat was actually lost some time before the wreckage
came ashore at Minnesota Point. What was seen by the different
boats, is not out of harmony with what little is told us by the
wreckage. The mate and wheelsman of the Lakeport saw some boat
coming out from the Duluth direction, and saw it cross the course of
the Lakeport some three or four miles ahead, turn northward, and
then lost the lights about 4:15 in the morning. Of course they might
be mistaken about that, but they then made an entry in the log book,
and I am inclined to think that they saw what they told me about,
and that it was the Noble. The place at which they saw the boat dis-
appear off Two Harbors, would not be inconsistent with the wreckage.

Yet again they are neither of them, nor both of them combined,
sufficient so a court can feel positive in regard to the matter. I am in-
clined to think they saw the boat, and that the Noble foundered then
and there, but I say I cannot feel that degree of positiveness about it
that we can do in some cases.

We can be reasonably positive from the testimony that at two
o'clock in the afternoon of Monday she was 20 miles off Portage
Canal. This was some 13 or 14 hours, at her speed, out from Duluth.
So we would expect to see the steamer in this locality at about this
time.

Again, we have the testimony of the light house keepers at Two
Harbors. I am satisfied that they are telling the truth regarding
what they saw and that it was the Noble. They may have been mis-
taken as to the exact time or distance, but I feel confident that they
saw the boat coming out from toward Duluth and evidently trying to
make Two Harbors. She was not approaching the harbor in such a
way as the lighthouse keepers thought was safe and prudent,
461 and he blew a whistle, and the boat evidently accepted that as
wise advice and turned back in the lake. Again, I have no
way of knowing that this was the Noble except that she was in that
locality and all other boats have explained that they were not there.

The court is grateful to counsel in the case for having exerted
every effort to advise the court of everything that occurred that night
in that end of the lake, so far as can be learned, by entrances, clear-
ances, and by the testimony of witnesses from all of the ships that
might be in this locality at this particular time. The court has had

the benefit and assistance of all the testimony on this subject that counsel has been able to produce.

The conclusion which I would reach, if I were to express my own feelings regarding it from the evidence, would be rather a theory than a finding. I do not feel that I am warranted in saying that I find that the Noble took this course and did that thing, and was lost at that spot and at that particular time, but rather to express the best theory that the court can give upon the subject, from a careful study of the evidence. That theory would be this:

That passing on her course to Superior, she would be likely to enter the Duluth entrance, and getting into this storm, and having passed beyond abreast of Two Harbors, the master of the Noble decided it would be safer for him to try to enter Two Harbors, and seek protection from the wind and sea at that place, rather than to continue on and try to enter Duluth, and that he did, with such ship and in such effort, after passing a short distance beyond Two Harbors, and only a short distance, because time will not permit him to have gone clear down to Duluth and then come back, but having passed shortly beyond Two Harbors, he turned and came back near the entrance of Two Harbors, and she was the boat seen from Two Harbors, and that then he turned and went out into the lake, and perhaps having failed in that effort to make Two Harbors, he again turned and went down the lake toward Duluth rather than to run into the wind or in the trough of the sea, and that having gone down there for a short distance he came back again hoping to make the entrance to Two Harbors by a better approach, and that he was the boat actually seen by the Lakeport coming back, crossing astern of the Morrell and ahead of the Lakeport, and that then having turned to the eastward, in the hope of again seeking entrance
462 at Two Harbors, foundered and sunk and was lost at the point seen by the mate and wheelsman on the Lakeport.

Again, we are assisted somewhat in reaching that conclusion by the velocities of the wind. I am satisfied that all the witnesses in that regard have tried to tell the court as best they could the velocity of the wind and the force of the sea, but I cannot help but feel that in matters of this kind, where there is such a great opportunity for witnesses to place different estimates upon the situation, that the safest guide for the court to adopt is the government records, and then to interpret that record in the light of the testimony of the witnesses who have observed with their eyes and their faculties the workings of nature.

The contentions of the respective parties in this case are both in harmony to the effect that whatever may have been the proximate cause of the disaster, the wind and the sea had something to do with it. No one contends that if there had been no sea or wind that this boat would not have gone safely across Lake Superior and into her harbor at Duluth. So for the purpose of trying to find when the wind became severe, we look at the records of the weather bureau for the velocities at Duluth, and having in mind the testimony of the witnesses that the wind is not accounted a gale until it reaches 40 miles an hour (evidently that is the dividing line fixed by those

experienced with the velocities of wind and their effect upon water where it becomes worthy at least of having some particular name assigned to it) I find the first recorded average hourly velocity of wind reaching 40 degrees velocity is from five to six on the morning of April 28th. Of course this is the velocity at Duluth, and the wind was from the northeast, so that the high velocity would have reached opposite Two Harbors, which is 22 miles to the eastward, at least half an hour earlier than at Superior. So that about the time the lights were seen to go out by the Lakeport on the ship opposite Two Harbors, we find that the wind had reached this high velocity. The storm had been in the making about long enough so it would have some heavy sea and did not depend entirely on the wind at that particular time.

In any event, the Noble was lost, ship, cargo and crew. The owners of the Noble have filed this petition for limitation of liability, and the cargo appears here as a claimant. The record shows that the cargo was insured; the Cambria Steel Company has secured insurance from the North American Insurance Company, and

463 I have admitted some evidence in regard to that insurance and the claim made for the insurance, solely for this purpose. The claimant in this case is asking to recover against the owners of the ship on the theory that the ship was unseaworthy because she was overloaded, and it was the contention of the owners, the petitioners, that the Cambria Steel Company had recovered the insurance money on the theory and on the claim that the loss occurred because of the perils of the sea. I admitted the proof in order that I might determine whether or not that had been done, because the thing for which the owners of the vessel are liable to the cargo and the things against which the insurance company insured are different. Of course the law would not be so unjust as to permit a claimant to come into court and recover his insurance money on the theory that it was the negligence of the owners in not having a seaworthy ship, and recover from the insurance company on the ground that the loss occurred because of the perils of the sea. The two claims would be entirely inconsistent, and in order that it might not occur, I admitted that proof. Having done that, I learn and find that no such claim has been made, and no money paid on any such claim or theory in this case. The cargo and insurance company have undertaken to protect themselves against any such situation as that, and at the same time treat each other with business fairness and honesty. They have paid the money to the owners of the cargo in order that their relations with their clients and customers might not be unpleasant, and at the same time recognizing the situation as it was, have done nothing to bar the owners of the cargo from making this claim. There ought not to be anything in the law which would prevent an insurance company from doing whatever it could to prevent inconvenience to those with whom they deal. So having ascertained that fact, and having so found, there is nothing about the insurance which ought in any way to influence this court or affect the ultimate findings in the case.

The claimants having shown that they made this contract directly with the owners of the vessel, to carry these rails, and that they

were actually delivered to the private carrier, and received a bill of lading and receipt therefor, and then having proved that the cargo never reached its destination and was never delivered to the consignee, the claimant could then rest its case, and the burden would shift to

the petitioner in this case to prove the competency of its crew
464 and the seaworthiness of its vessel. Seaworthiness should include the question of whether or not the vessel was properly loaded. In the actual trial of the case, and in order to avoid confusion, I requested and directed the claimants to put in their full case, and then the petitioners put in their case, and that then the claimants put in their rebuttal, and that course was pursued, simply for a more orderly method of swearing of the witnesses and proceeding with the trial. Of course there is no question about the loss of the ship's cargo and crew. While the law places the burden of proving seaworthiness upon the petitioner, in a case of this kind it does not make very much difference. The court after hearing the large number of witnesses which I have heard, will have an opinion one way or the other upon the subject, and I have a decided opinion in this case.

It would be impossible in this case for a court to feel positive as to an inch or half inch as to the depth the ship was loaded or ought to be loaded. I am going to do the best I can to express my conclusions in that regard. I reach the conclusion that this boat was overloaded. I will not stop with that finding but will do the best I can to reach a conclusion as to the depth she was loaded, and as to how deep she could have been loaded without being unseaworthy. First, as to the depth at which she was loaded. She must have been loaded almost decks to. The witnesses who saw her at Conneaut, almost all, placed her down practically decks to. While I recognize the danger of relying on witnesses who are not seafaring men, yet I do not feel so sure that those men who spend their lives working there on those docks, loading these vessels day in and day out, do not come to have almost unconsciously a pretty good eye for judging a proper trim and load. At the same time I must keep in mind that they did not have any particular reason for observing it; it was not a part of their duty. If that was the only testimony in the case I would feel some hesitancy about following it. Some saw her when she was moving out. Her movement might affect her draft an inch or two one way or the other. A witness might look at her and say she had 8 inches of freeboard, and he might look at a place where there was more than the minimum freeboard, but certainly no witness could see a place where there was less than minimum freeboard. In other words, there is more chance for honest witnesses to put her freeboard too much, rather than the other way. She might be listed, and make

her freeboard on the lower side appear less than it actually
465 was. The electrician and his companion here at Detroit, did not look with any degree of accuracy of course. They are entirely mistaken about the gates and the scupper, and at the same time I think they are honest witnesses. I think they saw water on the deck, but now that is about all I can tell from their testimony. The water came in through the scupper. But I do not know how much wind there was, and I think in fairness to their testimony they

did not know. She might have been listed; the waves might have been higher than they think. The water certainly did not come through the gates as they thought it did. That gate is 9 inches up from the deck, and the water did not come through that, but I believe the water came on deck while she was lying here at Detroit. Whether she was listed or whether the waves were high, or how it was, I do not know, but it leads me to think she was loaded close down to the water's edge. Other witnesses at Detroit estimate her decks as being higher. I have not overlooked that part of the record, but again perhaps they are mistaken or looked at the place where the freeboard was greater than the minimum. As soon as you go a little further forward on the ship there would be more freeboard. If the water came on at all of course it was at the lowest place. They are all comparatively casual witnesses. The government inspector was there but I think in fairness, he was but a casual observer so far as her draft was concerned, or so far as her cargo was concerned. I was glad to hear him say that if he reached the conclusion she was not seaworthy he would not have permitted her to leave the dock. I would have been sorry to have heard him testify any differently. Yet, he did say, and I am sure wanted me to understand that he was not there for the purpose of inspecting her cargo. He had never inspected a boat before with cargo in her; it was not the cargo or draft of ships he was there to look after. He had not had experience in matters of that kind and expressly said so. He was equally frank in saying he did not think he could tell when a boat was overloaded, and he did not think he was qualified to judge of that, and that he had never undertaken to judge of that. He was not there for that purpose or to give attention to those matters. The testimony as to her draft at Detroit is even more unsatisfactory than that at Conneaut, but it should be considered by the court along with all the rest. We next hear of her draft at the Soo, and I am impressed with the fact that there for the first time we have her draft taken by men who are in the business of taking

drafts. The only men I know of who ever looked at her,
466 whose duty it was to take her draft, were the government officials at the Soo. (I pause now to say in parenthesis that speaking from the cases I have heard, and from such knowledge as I have regarding these matters of loading, I have never known of a boat being loaded with an eye so solely to the amount of the cargo being put on her. The thing which is generally considered is the draft of the boat. The thing which the owners' agents and the master were talking about in loading the Noble was tons of cargo. What a captain usually does when he wants to know whether the ship is being overloaded or not, is to watch her draft. If the owners want to advise a new captain they tell him the safe draft. There are liable to be grave mistakes if anything else determines, because we have all seen in this lawsuit where figures may lead us. Owners of freight and owners of vessels and other people may be anxious to carry large cargoes. By intention or mistake there may be errors as to the tonnage. The guiding thing ought to be her draft, rather than the cargo that has been put into her.)

We come to the Soo, and there find witnesses who are employed by

the government whose duty it is to watch the draft of vessels. They are experienced in doing that very work, and that is what they are looking at the Noble for, and they make a record of it for the government. We have the record, and we have the testimony of witnesses showing that the Noble drew 18-3 aft. A government employe testified that her forward draft was 18-1 but no record was made of that, and there is more opportunity for mistakes on that account. While he was more competent to judge than the men who saw her at Detroit, I do not rely upon that so much as I would the government employee whose sole duty it was to record her draft, and did record her after draft.

I have tried from the petitioners' record and bills of lading to reach some conclusion. The only conclusion which I can reach and draw is that she had on just about the heaviest load she had ever carried. I find on examination that some of the loads are combination loads of pulp wood and steel rails. The computation which is submitted to me is based on the theory that a cord of pulp wood will weigh $2\frac{1}{2}$ tons. I do not know how accurate that is, and I do not think I can rely on those figures. I do not think any record has been shown to me, and if so I would be glad to have it pointed out now, in which she ever carried a load of steel rails which weighed any more than this load.

467 Mr. Canfield: 2935 tons.

The Court: It is called to my attention that she had one load of 2935 gross tons of steel rails. This still falls 16 tons short of the load she had on this occasion. That load was carried on what date?

Mr. Canfield: August, 1912, I think, or June.

The Court: That load was carried June 28th, 1912. The only loads which I find that approach the tonnage carried on this trip, were carried during the months of June, July and August.

A Voice: There is a combination of coal and rails. May I point that out, your Honor?

The Court: One load has just been called to my attention on April 19th, 1911, in which they compute the total tonnage as 2916, but as I understand it, 2935 tons of this was coal, and coal is measured in short tons. If I am to take short tons, then this boat had on the trip in question, 3305 short tons, which would exceed the cargo called to my attention by almost 300 tons.

But as I have already stated, these bills of lading are not claimed to be accurate; sometimes the figures have been obtained from the railroad weights, some of them are boat weights. I think it fair to find that the load in question was as heavy a load as she ever carried, if not the heaviest. All of the other loads which came anywhere near being as heavy as this one were carried during the months of June, July and August, which were freest from storms.

Again taking the recorded draft of this particular boat at the Soo, I find she was never recorded with a deeper draft than on this particular occasion, and never with the exception of two trips, was she recorded with as deep a draft as this, this trip being 18 foot 3. I

have before me now the record of ail of her trips through the Soo locks. There is one on June 13th from South Chicago to Port William, showing a draft of 18-3 aft, and on June 30th from South Chicago to Port William a draft of 18-3 aft. All the others show lighter draft. So again the records of draft at the Soo check up and coincide with the conclusion reached from the bills of lading, that she had never before carried any heavier load, and that the 468 only occasion when she did carry loads substantially as heavy as this were during the midsummer months.

Again, to check up the matter from another source, the government makes a record in short tons of the freightage carried through the locks, and they get this by asking the captain how many tons he has aboard. In this particular case we know with reasonable certainty how many tons this boat had on, which was 2950 long tons, or 3305 net or short tons. Now examining the records of the steamer Noble for her passages at the Soo we find that never before did she pass through the Soo locks with a load recorded so high at 3305 net tons. For some reason the master on the trip in question reported his cargo at 2950 tons. As I have already stated, the record is supposed to be stated in short tons, and so long as it is the exact amount of gross tons I cannot help but reach the conclusion that the officials at the Soo must have recorded it as the master gave it, and he, for some reason, gave the gross tonnage rather than the net tonnage.

So whether I try to check this up by the witnesses who have seen this boat and have tried to tell me how deep she was in the water, or whether I look at the kodak pictures taken as she was leaving the dock at Conneaut, or whether I check it up by the petitioners' own record, from their own office, as to the tonnage she has carried in years past, or whether I take the government records for the draft, or the government records for the tonnage, it all leads to the same conclusions, and helps me to feel satisfied that the result obtained is correct, viz: that she was loaded to the maximum depth she ever had been loaded, and that she was loaded almost to the decks to point. In order to place on the record just the best estimate I can give regarding it from the testimony and wishing to be understood however that when it comes to the nicety of an inch I am not certain, I would estimate her draft, when she left Conneaut, at two inches of mean freeboard or a mean draft of 17-10. Now it is not sufficient simply to determine how deep she was loaded, but it is also necessary for the court to reach a conclusion as to whether or not with such a load, such a draft, such a freeboard and such a ship at that season of the year she was seaworthy. Did the master and Mr. Francombe the managing agent have reason to anticipate that she would meet with the gale and that if she did the loss and damage would result. It involves in the first place a consideration of what the wind and sea are likely to be. I have in mind 469 not only the ship that is undertaking the voyage, but the cargo, the quantity of cargo, the length of the trip, the waters to be passed over, and the winds and seas likely to be experienced.

This cargo was destined¹ for the head of Lake Superior and this

was the first trip in the year. The records show that in the past ten years there have been 33 so-called gales at the west end of Lake Superior. A gale within the definition fixed by the witnesses and the Government officials is a 40-mile wind. It is urged that many of these occur early in April, and before navigation is opened. The records show that the last of April has many gales. I am sure if the record had been continued into the month of May it would have shown a good many gales occurring in May. I think it is the experience of men on the lakes that the month of May furnishes some high winds on Lake Superior. This was a heavy storm. There is no question about it. I am satisfied that severe storms occur and are expected on Lake Superior at that season of the year. Some of the witnesses, it is true, have said that this was more severe than any other storm in many years, but men from the boats, the majority of the men who were out on the sea that night, including the last witness, who went out and faced the wind and then came back, lead me to think that the public records fairly show the extent of that storm and the velocity of the wind, and that it is the safest and fairest guide for the court to follow in that regard. Of course the longer the wind blows the heavier the sea gets, if it continues from the same direction. There are many northeast winds at that place. While, as already stated, I cannot fix the exact time and place that boat was lost with certainty, I am satisfied that this boat was lost early in that storm, and I do not think the storm during the day time on Tuesday, the 28th, had anything to do with this case. I think the Noble was lost early in the morning of the 28th, at a time when the wind had not been blowing for a long period. I feel very certain that the witnesses who have said that this was the worst storm they had seen in many years and who described the extent of that storm, were describing what occurred on the 28th. The picture which they have in their minds is naturally the maximum of it, the worst of it. It was what they saw on Tuesday when this high wind had been blowing a long time that gave them the picture, and has given character to their testimony.

470 I think another thing to be considered in connection with that is the testimony of the men on the other boats. At

least two mates stated they did not call their captains on account of the storm; that they did not change their course of their boats on account of the storm. (Except the Lambert, which turned and came back, not because she was in danger but because she was not making good headway against the wind.) So the conclusion which I reach with reference to the wind and sea is that while it was a very heavy wind and a very heavy sea, that the weather reports are not in conflict with the testimony of the oral witnesses. It can all be harmonized, and the weather reports are the fairest picture that can be drawn of the velocity of the wind, and the sea is about in keeping with the wind and what would be expected with that kind of a wind. The Noble, her master and owners, should have anticipated all these things, including velocity and direction of the wind and the resulting sea.

Now to go back to Conneaut with this boat, at her starting,

loaded as I find she was loaded down so that her decks were within two inches of the water. Was that a safe load for her to carry? Upon this branch of the case many witnesses have been called by the petitioner, men of experience, and the court gladly joins with counsel in what has been said about the courage and sturdy qualities of these men. I appreciate the responsibility which I am taking when I find contrary to what these men say is seaworthy. After listening to all of the testimony, I must make my findings and reach my conclusions. I must do it from the testimony. At the same time we cannot help but be impressed with certain things. I think it is only fair to the record that I express myself freely about things and want it understood that I do not do it in criticism. Of course they are brave men, they are afraid of almost nothing except their owners. Take the men on this ship; they are afraid of nothing except the captain. It is not the fault of the owners, and it is not the fault of the captains, but that is ship life. That is the way it is and this rigid discipline is necessary. It has grown up with all of these years, of doing things in that way. The captain is boss on the boat, and everybody has to obey what he says. The watchmen and the wheelmen are not afraid of the elements or anything else, but they obey the captain. Of all the men who come into my court, I think none of them are so brave as the sailors, and at the same time none stand in greater fear of his boss. It is not the owner's fault. Undoubtedly it is 471 virtue rather than a fault. In any event it is the situation.

It applies as much to the relations between the master and the managing agent (or shore captains) as it does to the orders from captain to mate. It is necessary for the court to have this situation in mind in weighing testimony and in other branches of this case. I am satisfied that this particular class of boats are overloaded. They are loaded too deep; particularly this class of small boats with bulwarks. The scuppers would discharge the waters *far* washing down the decks, but when it comes to a storm and the waves coming over the top of the bulwarks, the amount of water the scuppers could carry off is not worth figuring on, and the gates are almost as deficient, even if they were open. The gates open outward, the intention being that as the wind gets fresh and the sea gets high and the boat ships water, as she rolls to the starboard side the water will rush to the starboard side of the ship, and this gate which is swung at the top will swing out and the water runs out, and that when she swings to port, the water will rush over to the port side, and the gate will swing to port and let the water run out that way. That is the theory. This boat, as I said, was built for the canal trade, 14½ foot draft. The blue print made of her by the man who designed her shows 14½ foot draft when loaded. There is testimony to indicate that as the ideal draft. Any draft which puts this boat down so that she cannot discharge the water from her decks makes her dangerous and unseaworthy. If she gets out into any sea that is worthy of consideration at all, any sea that can be called a gale, any one of these 33 gales in the month of April on the west end of Lake Superior in the last ten

years, she is going to ship water in immense quantities, and she has got to discharge it if she continues to float. I have already described the process which the designer of this boat intended would make it possible for her to discharge the water which would be shipped on to her decks. It will readily be seen that as soon as you put her down with two inches of freeboard or ten inches of freeboard, that as soon as she rolls to starboard and the water tries to be discharged from the starboard side of the ship, that the starboard bulwarks are down in the water and the water holds the gates shut, and the water cannot be discharged from her decks; the same thing occurs when she rolls to port. So she might just as well

472 have bulwarks without gates as with them, and the gates in my judgment are not sufficient in size to carry off the water that would be shipped on her if you were going to put her down even to the maximum amount of freeboard described by any witness in this case. If they are going to load a boat like this down anywhere near "decks to" she certainly ought not — have any bulwarks. She was built with bulwarks because she was intended to carry pulp wood with a cargo upon decks, and the pulp wood, piled many feet high on the decks, would work along with the bulwarks to keep her from shipping seas. For the draft she was intended, 14½ feet, and with the cargo she was intended, pulp wood, the bulwarks were all right and proper, but the bulwarks are not proper and of no assistance and are an absolute detriment to her if you are going to put her down anywhere near decks to, when loaded as on the trip in question. No use has been ascribed to them, and every witness who expressed himself upon that subject, stated that they were a detriment rather than a help. Again, not wishing to be understood as being able to be accurate, when I come to the exact figures, but in order that this record may show as accurately as I can, I fix the very least freeboard that this vessel ought to have, if she was to encounter a gale (and by that, I mean 40 mile wind, and the sea that goes with it), at 18 inches of freeboard. I have already found that that sort of a storm is to be expected in April. I am not undertaking to decide what is proper freeboard for any boat or time except the one in issue, but when a gale was reasonably to be expected, then the Noble should not have been loaded deeper than a mean draft of 16½ feet which means a freeboard of 18 inches. So I find she was overloaded, that she encountered heavy seas and a storm, but no heavier and no greater than should have been reasonably anticipated and expected at that season of the year. Other boats were in the same storm and came through without difficulty. I am satisfied and find that the Noble foundered because she was overloaded.

Now who was to blame for it, or in other words, are the petitioning owners entitled to limit their liability? This boat was owned by a corporation, and like all corporations, had to do business through some one representing the corporation. In this case that individual was Mr. Francombe, the managing agent of the corporation. He was a man of mature years and ripe in experience. He was in all things pertaining to the lakes and to the management

of this boat, the corporation; he represented that corporation
473 and handled that boat with the same authority and the
same freedom that he would manage his own boat. So he
stands, so far as this question is concerned, in place of the corpora-
tion, and his faults are the faults of the corporation, and binding
upon the corporation.

It is urged that it was the captain's judgment that controlled in
this matter, and that he was the one who decided the cargo and not
Mr. Francombe. I cannot agree with that contention. I think that
the discretion which the captain used was no more than as to the
trim of the ship; he decided whether he would stop at this particular
car or whether he would put on one more. But as to the great and
important question here, as to whether this boat was loaded down
almost decks to, or whether she was loaded to 16-6, whether she had
3305 tons or whether it was much less than that, 25 or 2600 tons,
that was left to his discretion; that was Mr. Francombe's discretion.
I do not think that in this case the discretion was left with the cap-
tain. It is urged that the captain must have thought the load proper
or he would not have entrusted his own life on the trip. For years
in the case of fog on the lakes, it was urged that the captains were
the ones to blame for running at full speed and that they were using
their discretion. Last year, at the beginning of the season, word
was sent out by the owners that captains were not to run at full
speed in the fog, and it has almost disappeared from the lakes. Cap-
tains are not going to run at full speed in the fog if the owners do
not want them to. The owners have put a stop to the practice be-
cause the captains have found they are in earnest, and the owners —
to be commended for it. Men are not going to run these boats down
to the water's edge and endanger their lives if they think their
owners do not want them to do it, but again their courage is so great,
and their need for position is so great, that so long as the owners
want their boats sailed down to the water's edge they will find men
who will do it. I am satisfied that the captains who came here and
testified have sailed their boats down where they say they have, but
nearly all of them did say they let them up in varying amounts in
the fall of the year. Why? There is only one answer to it; that is
because of the gales and storms, and that is the only reason. Now
if they ought to expect storms in the spring of the year, it follows
that in the spring of the year these boats ought not to be loaded to
their maximum, as this boat was.

474 Again, I am impressed with the fact that very few of the
many who were called could or would say at what depth a
boat becomes unseaworthy and dangerous. Counsel urge that the
reason for that is because they have never loaded a boat to such a
point, but know it is safe as deep as they have loaded. I am not im-
pressed with that argument, and I think it lessens the value of their
opinion to the effect that this boat was seaworthy as loaded. To tell
when it is light necessitates telling when it is dark; to tell what is
deep necessitates telling what is shallow; to tell what is safe necessi-
tates telling what is unsafe. To say that a man can testify that the
speed of an untomobile is safe up to a certain point, but that beyond

that he cannot testify what is dangerous, would not impress me with the value of the estimate placed as to safety. They qualify their ability to express an opinion in such a way that they never in any case could be witnesses for the other side and take the witness stand and say beyond that point it is unsafe and dangerous. I recognize the difficulty that the claimant in this case would have in getting men to testify. In the first place they would have to get men who were sailing boats of that kind, and I am satisfied it would be difficult to get men who would be willing, in a case where it was simply an expression of opinion, to come into court and be witnesses against vessel owners. I think captains feel if they did they would be jeopardizing their chances to get a boat of this class to sail the next year on the lakes, so long as owners want their boats loaded to that depth. It is being done, and this record may show as my conclusion that they are sailing this class of boats down there where they have testified they do in midsummer months. No such custom has been shown for months when storms prevail. I find and think it is dangerous and they are unseaworthy when they are down there. They get through. Maybe they don't get in a storm. Maybe they get in a storm and have good luck, and then they testify that their boat is safe because it got through. Captain Eisenhardt did not get through; he is on the bottom of Lake Superior and cannot be a witness on the other side in any of these lawsuits to say it is dangerous. It seems to me it should take very strong proof to satisfy any court or anybody that was disinterested that you can take a boat with bulwarks on her and put her down in the water almost decks to and then claim she is safe. Even if the gates are strapped up so they are wide open, still the water would rush on to that deck, and the bulwarks would hold it to a great extent and prevent it
475 from running off as it would if there were no bulwarks.

I am also of the same opinion when I consider the testimony of the experts as to buoyancy. I do not think that we ought to figure that in a boat of this type that the buoyancy of the poop and fore-castle ought to be taken into account. They have doors, and if the crew want to get out and do anything on deck they would have to open the doors.

For this type of ship, with bulwarks, I think we ought not to figure any buoyancy above the decks, because you cannot use that buoyancy until you get the decks under water. I think for safety the usual percentage of buoyancy (say 20% to 25%) ought to be found below decks, because you cannot use what is above until you get the decks down under water, and when you get the decks under water you are in trouble. If a hatch should get loose in a heavy gale, the boat would have absolutely no chance because the men could not get back and forth on a boat like this to do anything on deck if the decks were under water. If she went through, and they did not get a loose hatch, and did not part a wheel chain, and everything worked fine, then the captain could appear as a witness in the next law suit and say she was seaworthy. But if a hatch got loose or she gets in the

trough of the sea, or anything goes wrong, she is on the bottom of the lake.

In this case I think and find that the Noble foundered because she was overloaded.

I say that I do not think it was the judgment of Captain Eisenhardt that determined this overload. I think he did no more than trim the ship. In fact the telegram which he sent to Mr. Francombe shows he did not want to take all of the rails. The telegram sent back to Captain Eisenhardt did not mention the draft, and did not mention anything about safety. It did say "Think 3,000 tons too much." I do not see how any other thought could have been entertained at that season of the year. A command from the owner to the captain is stronger than from the captain to the second mate, or the second mate to the deck hand. The telegram was not proper instructions. That was not directing a proper load to tell him to take all he could. That is just what the captain did; he just obeyed that command. He had never sailed in this boat before, and he had never been captain of any boat before. He had told Mr. Francombe that if he did not make good he need not pay him. Mr. Francombe told him if he

did make good he would give him a bonus. He had 3,000 475 tons on the dock to take. Mr. Francombe wired him "Take all you possibly can." He did take it. When he got along up to Detroit, the managing agent went aboard of her, saw it, and talked with him about it, and the managing agent, with his experienced judgment, must have known she was overloaded, and yet he permitted her to go on her journey, thinking no doubt she would probably get through, and of course hoping she would get through.

It was the mistake and wrongdoing of the owners of the vessel, and they are not entitled to limit their liability and they are responsible for the damages which resulted.

An interlocutory decree will be entered accordingly.

I will refer it to Mr. Sayres as Special Master.

Opinion.

(Filed Feb. 23, 1916.)

TUTTLE, J.:

The Steamer "Benjamin Noble" was built at the Detroit Ship-building Company's plant in 1909, and was 240 feet between perpendiculars, 255 feet over all, 42 feet beam and 18 feet molded depth. She was built for the so-called canal trade and for the particular trade of carrying pulp wood. The maximum draft for the Welland Canal, through which she was intended to operate, is 14-6. She had a speed of ten and one-quarter miles an hour. She was a steel boat with steel houses and wooden hatch covers. She was what is known as very sheer, in that her deck raised very rapidly as you went forward from No. 5 hatch, being about six feet higher at her extreme bow than at the lowest point in her deck. Her deck was also crowned, being ten inches higher in the middle of the beam than at the edge of the deck. It was intended that she would carry a large portion of her cargo of

pulp wood on deck, and her decks were correspondingly well and strongly constructed. She had bulwarks and at intervals
477 there were gates swinging outward for the purpose of discharging water which might come on deck. She engaged in trade on the Great Lakes in the year 1909, and each year thereafter until the unfortunate trip in question, when in April, 1914, with the twenty men constituting her crew she was lost on Upper Superior.

During her entire existence she was owned by the Capitol Transportation Company and was managed by its agent, Mr. Francombe of Detroit, a man of many years' experience on the lakes, as a chief engineer on steamboats, and also of many years' experience as a managing agent of boats on the Great Lakes. The local vessel agent at Cleveland for the Noble was Mitchell & Company, and she had local vessel agents in other lake ports.

Prior to the opening of navigation in the spring of 1914 the Cambria Steel Company of Pittsburgh, Pennsylvania, communicated with Hanna & Company of Cleveland, who are brokers for freight business, and advised them that they had 3,000 tons of steel rails which they wished to ship from Conneaut, Ohio, to Superior, Wisconsin, as soon as navigation opened in the spring. Thereupon, a representative of Hanna & Company called up Mitchell & Company and asked them whether they could furnish a boat to carry 3,000 tons of steel rails. Mitchell & Company communicated with Mr. Francombe and a contract was made between the Capitol Transportation Company, represented by Mr. Francombe, and the Cambria Steel Company, represented by Hanna & Company, for the transporting of these rails on the Noble at a rate of 80 cents per ton.

Among other duties entrusted to Mr. Francombe as the managing agent of the Noble, was the duty of selecting a master and he selected for the season of 1914, Captain Eisenhardt, who had been employed on boats somewhat similar to the Noble. While he had never been master of a ship, he had many years of experience in all of the minor positions, at the forward end of the ship, and he was well qualified for advancement from mate to master. He was not only recommended at this time to Mr. Francombe, but in advance of the season of 1913 he had made application to Mr. Francombe for a position and was at that time well recommended, so no fault can be found with the Capitol Transportation Company because of Mr. Francombe's selection of a master. To say that vessel owners were negligent be-

cause they selected a man who had never before been a master
478 would make it almost impossible for men to advance in their work, and secure ultimately the highest position on a ship.

On the other hand, in considering this case and the relations of the parties and the duties which the owners of the ship owed to the master, crew and cargo, it should be borne in mind that the master was for the first time to take command of a ship, and that he had never served upon the Noble in any capacity. So we start in with this well built and seaworthy ship (as to condition of hull and construction) at Conneaut, with a master and crew qualified for their positions; with the owner of the ship having made a personal con-

tract with the owner of the cargo to carry 3,000 tons of steel rails on the first trip of the season from Conneaut to Superior.

There is nothing in the situation to show that the Cambria Steel Company or any of its agents undertook in any way to select the ship. They had a cargo which they wished to transport and they conveyed this information to those engaged in the trade of carrying on the lakes. The owners of the Noble, learning of the freight to be carried, undertook with the owners of the cargo to transport it and offered and contracted for the Noble as a suitable carrier.

The steel rails were brought to Conneaut in gondola cars. The captain was in charge of his ship. The men on the dock began to unload the rails from the cars to the boat by means of whirleys. While that work continued the captain of the Noble called up Mr. Mitchell of Mitchell & Company, each day at eleven o'clock, to let him know how the work was progressing. On Friday, April 17, 1914, Captain Eisenhardt from Conneaut telegraphed to Mr. Francombe, the managing owner at Detroit, as follows: "Will be loaded Saturday noon. Mitchell wants 3,000 tons to go if possible. Please advise." To this telegram Mr. Francombe promptly replied: "Think 3,000 tons too much. Best take all you possibly can." Captain Eisenhardt took 2,951 gross tons of the rails, leaving one carload, which would be about 50 tons.

The Noble had wintered at Cleveland and was only partially inspected at Cleveland before leaving for Conneaut, arrangements having been made that the spring inspection would be completed at Detroit, in order to avoid delay at Cleveland.

The Noble left Conneaut Saturday, April 18, reaching Detroit shortly after noon on Sunday, April 19. She remained at the dock in Detroit until Thursday morning, April 23, during which time her inspection was completed and repairs were made to her steering gear. While she was at Detroit, Mr. Francombe was aboard several times, looking over the ship and cargo, and talking with the captain, and he was familiar with the entire situation.

On Thursday, April 23, she continued her up-bound trip, and we hear of her next at the Soo where she was locked through the Poe Lock late Saturday afternoon, April 25. We next hear of her at two o'clock on the afternoon of Monday, April 27, somewhere about twenty miles off Portage Canal. This would make her about a day late, considering the time she passed the Soo, provided she had at all times continued at normal speed on her course. Nothing has been shown to explain why she should have been delayed the twenty-four hours. However, that is not a matter of any importance in this controversy, because when seen at two o'clock on the afternoon of Monday, April 27, she was continuing on her course, evidently at her usual speed. Possibly it can be accounted for in this, that her barometer may have shown some evidence of the storm that was approaching or some other storm, and she may have remained anchored until such time as she thought the weather conditions were favorable. No one is able to identify the Noble as having been seen thereafter.

As to what occurred thereafter, we are compelled to rely upon an accumulation of evidence from various outside sources for our con-

elusions, and of necessity, the particular things which happened to the Noble thereafter are shrouded in some mystery and doubt. We do know that a heavy storm came on from the northeast, beginning at about three o'clock in the afternoon of April 27, gradually increasing in severity until the wind had reached its maximum velocity, about seven o'clock in the morning of the 28th, continued during the entire day of the 28th, and that on Wednesday morning, April 29, pieces of hatch covers, a piece of oar, cordage and a life raft from the Noble were washed ashore at Minnesota Point, between the Duluth and Superior entrances, giving unmistakable evidence that the Noble had been lost. None of the bodies of the twenty men constituting the crew have ever been found. No additional portions of the wreckage have ever been found, except on Thursday, April 30, when the life-saving crew at Minnesota Point worked with their boat back and forth over the west end of Lake Superior and in their search found, at a point about three miles off the north shore and about ten miles to the eastward of Minnesota Point, three pieces of wreckage, viz., a hook with a piece of wood attached to it, which evidently had come out of one of the cabins, a piece of the bridge and a piece of a strong back from one of the hatches.

I should not want to be understood as feeling sufficiently certain about the exact time or place that the Noble went down, to make a positive finding in that regard. No one of the particular bits of evidence offered are conclusive, but taking all of them together, we can be reasonably certain as to the time and locality in which the final misfortune came. The wreckage is of some assistance in this determination. There is a backset to the water when the wind is sufficiently high to raise the water at Minnesota Point, and that backset is not so great while the wind continues as it is when the wind goes down, and while the wind continues that backset is probably below the surface of the water rather than at the surface. I doubt that the three pieces of wreckage found on April 30 had ever been down to the beach at Minnesota Point. I think the wreckage occurred somewhere to the eastward of where this wreckage was picked up on the 30th. Undoubtedly the wreckage which came ashore on the morning of the 29th at Minnesota Point left the Noble at the same time and place as the wreckage which was found on the 30th, ten miles down the lake. The fact that neither the life boats from the Noble nor any of the bodies of the crew were found leads me to think that the Noble went down quickly and while the men were inside. No wreckage was found except the things that wind and water would knock off. I am satisfied the boat was lost some considerable time before the wreckage came ashore at Minnesota Point.

What was seen by the different boats is not out of harmony with what little is told us by the wreckage. The mate and wheelsman of the Lakeport, going to Duluth, saw some boat coming out and saw it cross the course of the Lakeport some three or four miles ahead, turn northward and then lost the lights about a quarter after four in the morning of the 28th. They made an entry of that fact in the log book, and I think the boat they saw was the Noble. The place at

which they saw the boat disappear off Two Harbors would not be inconsistent with the wreckage.

We can be reasonably positive from the testimony that at two o'clock in the afternoon of Monday the Noble was twenty 481 miles off Portage Canal. This was some thirteen or fourteen hours, at her speed, out from Duluth; so we would expect to see the steamer off Two Harbors at about this time.

Again, we have the testimony of the light-house keepers at Two Harbors. I feel confident that the boat they saw was the Noble coming out from toward Duluth and evidently trying to make Two Harbors. She was not approaching the harbor in such a way as the light-house keeper thought was safe and prudent; so he blew the fog whistle and she evidently accepted that as wise advice because she turned out into the lake. I have no way of knowing that this was the Noble except that she was in that locality and all other boats have explained that they were not there.

The court is grateful to counsel for the effort exerted to advise the court of everything that occurred that night in that end of the lake, so far as can be learned from entrances, clearances, and by the testimony of witnesses from all of the ships that might be in that locality at that particular time.

I think the following is undoubtedly what occurred: That passing on her course to Superior and getting into this storm, and having passed a short distance beyond abreast of Two Harbors, the Noble decided it would be safer to enter Two Harbors and seek protection from the wind and sea at that place, rather than to continue on her course and try to enter Duluth; that she could not have gone far beyond Two Harbors, because time did not permit her to have reached the immediate vicinity of Duluth and then come back to Two Harbors; that she turned and came back near the entrance of Two Harbors, and hearing the warning signal from Two Harbors, she turned and went out into the lake; that having failed in the first effort to make Two Harbors, she turned and again went down the lake towards Duluth rather than run into the wind or in the trough of the sea, and that having navigated in this westerly direction for a short distance she came back again hoping to make the entrance at Two Harbors by a better approach at this time, and that she was the boat seen coming to the eastward, crossing astern of the Morrell and ahead of the Lakeport, and that then having turned to the northward again, seeking entrance at Two Harbors, she foundered and sank at the point seen by the mate and wheelsman on the Lakeport.

Again, we are assisted somewhat in reaching that conclusion 482 by the velocities of the wind. I am satisfied that all the witnesses on this phase of the case have tried to tell the court as best they could the velocity of the wind and the force of the sea. There is great opportunity for these witnesses to honestly differ in their estimates. The safest guide for the court in this case is the government record, interpreted in the light of the testimony of the witnesses who have observed the effect of the wind.

The contentions of the respective parties in this case are in harmony to the effect that whatever may have been the proximate

cause of the disaster, the wind and the sea had something to do with it. No one contends that if there had been no sea or wind this boat might not have gone safely across Lake Superior and into her harbor at either the Duluth or the Superior entrance. So for the purpose of trying to find when the wind became severe, we look at the records of the weather bureau for the velocities at Duluth, and having in mind the testimony of the witnesses that wind is not accounted a gale until it reaches forty miles an hour, we find the first recorded average hourly velocity of wind reaching forty miles velocity is from five to six o'clock on the morning of April 28. Of course, this is the velocity at Duluth, and the wind was from the northeast, so that the high velocity would have reached opposite Two Harbors, which is twenty-two miles to the eastward, at least half an hour earlier than at Duluth; so that about the time the lights were seen by the Lakeport to disappear from the ship opposite Two Harbors we find that the wind had reached this high velocity. The storm had been in the making long enough so there would be some heavy sea and it did not depend entirely on the wind at that particular time.

The Noble was lost, ship, cargo and crew. The owners of the Noble have filed this petition for limitation of liability, and the cargo appears here as a claimant. The Cambria Steel Company had secured insurance on the cargo from the Insurance Company of North America. I have admitted evidence in regard to that insurance, and the claim made by the cargo for the insurance. The claimant in this case is asking to recover against the owners of the ship on the theory that the ship was unseaworthy because she was overloaded. It is the contention of the owners of the Noble, the petitioners, that the Cambria Steel Company had recovered the insurance money on the theory and on the claim that the loss occurred because of the perils

of the sea. I admitted the proof relative to the insurance
483 in order that I might determine whether or not that had been done. The thing for which the owners of the vessel are liable to the cargo and the things against which the insurance company insured are different. Of course, the law would not be so unjust as to permit a claimant to come into court and recover on the theory that it was the negligence of the owners in not having a seaworthy ship, and at the same time recover from the insurance company on the ground that the loss occurred because of the perils of the sea. The two claims would be entirely inconsistent, and in order that such a thing might not occur, I admitted that proof. It appears that no such claim has been made, and no money paid on any such claim or theory. The cargo and insurance company have protected themselves against any such situation as that, and at the same time have treated each other with business fairness and honesty. The insurers have paid the money to the owners of the cargo under a proper arrangement and in order that their relations with their clients and customers might not be unpleasant. There is nothing in the agreement between the insurance company and the owners of the cargo in any way inconsistent with the claim here made. So having ascertained that fact, and having so found, there is nothing about the

insurance which ought in any way to influence this court or affect the ultimate findings in the case.

The claimants having shown that they made this contract directly with the owners of the vessel, to carry these rails, and that they were actually delivered in good order to the carrier, and that they received a bill of lading and receipt therefor, and then having proven that the cargo never reached its destination and was never delivered to the consignee, the claimant could then have rested its case, and the burden would have shifted to the petitioner in this case to prove the competency of its crew, the seaworthiness of its vessel, and that the loss occurred within one of the exceptions, such as perils of the sea, for which it is relieved of liability under the bill of lading and the so-called Harter Act.

The law implies on the part of every carrier, whether common or special, a warranty of seaworthiness in the absence of express agreement, and the burden of proving seaworthiness is upon the carrier.

"Such is the implied contract where the contrary does not appear."

Work vs. Leathers, 97 U. S. 379-380.

484 See the recent case of *The Fitzgerald* 212 Fed., 678 (C. C. A., Sixth Circuit, 1914), decided by the Circuit Court of Appeals of this circuit, in which the authorities upon seaworthiness and the burden resting upon the carrier are carefully discussed.

See also

Benner Line vs. Pendleton et al., 217 Fed., 497; C. C. A., Second Circuit, 1914;

The Rappahannock, 184 Fed., 291;

C. W. Elphicke, 122 Fed., 439;

The Presque Isle, 140 Fed., 202;

Edwin I. Morrison, 153 U. S., 199, 211;

The Carib Prince, 170 U. S., 655;

The Caledonia, 157 U. S., 124;

The Lillie Hamilton, 18 Fed., 327;

Neilson vs. Coal Company, 122 Fed., 617;

Sumner vs. Caswell, 20 Fed., 249.

Seaworthiness should include the question of whether or not the vessel was overloaded. In the actual trial of the case, and in order to avoid confusion, I requested and directed the claimant to put in its full case, that then the petitioners put in their case, and that then the claimant put in its rebuttal, and that course was pursued. While the law places the burden of proving seaworthiness upon the petitioner, in a case of this kind it does not make very much difference. The court after hearing the large number of witnesses which I have heard, will have an opinion one way or the other upon the subject, and I have a decided opinion in this case. If there was any doubt upon the question of seaworthiness such doubt must be resolved in favor of the shipper. (See *The Fitzgerald supra*).

See also:

The Wilderoft, 201 U. S., 378, 389, 26 Sup. Ct., 467, 469;

The Edwin I. Morrison, *supra*.

But there can be no question of doubt in this case as the shipper by direct and convincing evidence has proved the unseaworthiness of the carrier.

It would be impossible in this case for a court to feel positive about the depth to which the ship was loaded or ought to be loaded, if it was a question of an inch or half an inch. The issue is not such a narrow one and I reach the conclusion and make the finding that this boat was overloaded. I will not stop with that finding
485 but will do the best I can to reach a conclusion as to the depth she was loaded, and as to how deep she could have been loaded without being unseaworthy. First, as to the depth to which she was loaded. She was almost "decks to." The witnesses who saw her at Conneaut, almost all, placed her down practically "decks to." While I recognize the danger of relying on witnesses who are not seafaring men, yet those men who spend their lives working there on those docks, loading these vessels day in and day out, come to have almost unconsciously a good eye for judging a proper trim and load. At the same time, I must keep in mind that they did not have any particular reason for observing it; it was not a part of their duty. If that was the only testimony in the case I would feel some hesitancy about following it. Some saw her when she was moving out. Her movement might affect her draft. A witness might look at her and say she had eight inches of freeboard, and he might look at a place where there was more than the minimum freeboard. In other words, there is more chance for honest witnesses to put her freeboard too much, rather than the other way, although she might be listed, and make her freeboard on the lower side appear less than it actually was. One witness at Conneaut took a kodak picture of her as she was leaving the harbor, and this shows her "decks to" as nearly as I can determine. The electrician and his companion at Detroit, who observed her as she was lying at the dock, did not look with any degree of accuracy. They were entirely confused about the gates and scuppers, and at the same time I think they are honest witnesses. They saw water on the deck, but that is about all I can gather from their testimony. They thought the water came in through the gates, but it is plain from their own testimony that it must have come through the scupper. I am convinced that the water came on deck while the Noble was lying at Detroit. Whether she was listed or how high the waves were, I do not know, but it leads me to think she was loaded close down to the water's edge. Other witnesses who were casual observers at Detroit estimate her decks as being higher. Perhaps they looked at a place where the freeboard was greater than the minimum. As soon as you go further forward on the ship there would be more freeboard. The water came on, of course, only at the lowest place, while at the dock in Detroit. The Government inspector was there, but he was only a casual observer so far as
486 her draft was concerned, or so far as her cargo was concerned.

I was glad to hear him say that if he had reached the conclusion that she was not seaworthy he would not have permitted her to leave the dock. He had never inspected a boat before with cargo in her, and it was not the cargo or draft of ships he was there to look

after. He had not had experience in matters of that kind and expressly said so. He was equally frank in saying he did not think he could tell when a boat was overloaded. The testimony as to her draft at Detroit is even more unsatisfactory than that at Conneaut, but it should be considered by the court along with all the rest. We next hear of her draft at the Soo, and there for the first time we have her draft taken by men who are in the business of taking drafts. The only men shown to have looked at her for the purpose of taking her draft, were the Government officials at the Soo. (Speaking from the cases I have heard, and from such knowledge as I have regarding the loading of vessels, I have never known of a boat being loaded with an eye so solely to the amount of the cargo being put on her, as the *Noble*. The thing which is generally considered is the draft of the boat. The thing which the owners' agent and the master were talking about in loading the *Noble* was tons of cargo. What a captain usually does when he wants to know whether the ship is being overloaded or not, is to watch her draft. If the owners want to advise a new captain, they tell him the safe draft. There are liable to be grave mistakes if anything else determines. Owners of freight, owners of vessels and members of the crew may be anxious to carry large cargoes. By intention or mistake there may be errors as to the tonnage. The guiding thing ought to be the draft, rather than the cargo.)

We come to the Soo, and there find witnesses who are employed by the Government whose duty it is to watch the draft of vessels. They are experienced in doing that very work and that is what they were looking at the *Noble* for, and they make a record of it for the Government. We have the record showing that the *Noble* drew 18-3 aft. A Government employe testified that her forward draft was 18-1 but no record was made of that and there is more opportunity for mistakes on that account. While he was more competent to judge than the men who saw her at Detroit, I do not rely upon that so much as I would the Government employe whose sole duty it was to record her draft, and did record her draft aft.

487 I have examined petitioner's records and bills of lading.

Some of the loads she had carried were combination loads of pulp and wood and steel rails. The computation which is submitted to me is based on the theory that a cord of pulp wood will weigh two and a half tons. I do not know how accurate that is, and I do not think I can rely on those figures. No record has been shown to me in which she ever carried a load of steel rails which weighed any more than this load.

It is called to my attention that she had one load of 2,935 gross tons of steel rails. This still falls 16 tons short of the load she had on the trip in question, and that load was carried on June 28, 1912. One load of April 19, 1911, was called to my attention, in which they compute the total tonnage as 2,916, but 2,035 tons of this was coal, and coal is measured in short tons. If I am to take short tons, then the *Noble* had on the trip in question 3,246 short tons, which would exceed the cargo called to my attention by 330 tons.

These bills of lading are not claimed to be accurate; sometimes the

figures have been obtained from the railroad weights and some of them are boat weights. The load in question was as heavy a load as she ever carried, if not the heaviest. All of the other loads which came anywhere near being as heavy as this one were carried during the months of June, July and August, which are freest from storms.

Again taking the recorded draft of this particular boat at the Soo, I find she was never recorded with a deeper draft than on this particular occasion and never with the exception of two other trips, was she recorded with as deep a draft as 18-3. I have before me the record of all of her trips through the Soo locks. There is one on June 13 from South Chicago to Fort William, showing a draft of 18-3 aft, and on June 30 from South Chicago to Fort William a draft of 18-3 aft. All the others show a lighter draft. So again, the records of draft at the Soo check up and coincide with the conclusion reached from the bills of lading, that she had never before carried any heavier load, and that the only occasion when she did carry loads substantially as heavy as this were during the mid-summer months.

Again, to check up the matter from another source, the Government makes a record in short tons of the freightage carried through the locks, and they get this by asking the captain how many tons he has aboard. In this particular case we know with reasonable certainty how many tons this boat had on, which was 2,951 488 long tons, or 3,246 net or short tons. Now, examine the records of the Steamer Noble for her passages at the Soo, we find that never before did she pass through the Soo locks with a load recorded so high as 3,246 net tons. So, whether I try to check this up by the witnesses who have seen this boat and have tried to tell me how deep she was in the water, or whether I look at the kodak picture taken as she was leaving the dock at Conneaut, or whether I examine the petitioner's own record, from their own office, as to the tonnage she has carried in years past, or whether I take the Government records for the draft, or the Government records for the tonnage, it all leads to the same conclusions, and helps me to feel satisfied that the result obtained is correct, viz: that she was loaded to the maximum depth she had ever been loaded, and that she was loaded almost to the "decks to" point. In order to place on the record just the best estimate I can give from the testimony, and wishing to be understood, however, that when it comes to the nicety of an inch, I am not certain, I would estimate her draft, when she left Conneaut, at two inches of mean freeboard or a mean draft of 17-10.

It is not sufficient simply to determine how deep she was loaded but it is also necessary for the court to reach a conclusion as to whether or not with such a load, such a draft, such a freeboard and such a ship, at that season of the year, she was seaworthy. Did the master and managing agent have reason to anticipate that she would meet with the gale and that if she did the loss and damage would result. It involves a consideration of what the wind and sea were likely to be, I have in mind not only the ship that is undertaking the voyage but the kind and quantity of cargo, the length of the trip, the waters to be passed over and the winds and seas likely to be experienced.

The cargo was destined for the head of Lake Superior, and this was the first trip in the year. The records show that in the past ten years there have been thirty-three so-called gales (a wind of forty miles or more per hour), at the west end of Lake Superior during the month of April. It is urged that many of these occur early in April, and before navigation is opened. The records show that the last of April has many gales. If the record had been continued into the month of May it would have shown a good many gales occurring in May. It is the experience of men on the lakes that the month of May furnishes some high winds on Lake Superior. This was a

489 heavy storm. There is no question about it. Severe storms occur and are to be expected on Lake Superior at that season of the year. Some of the witnesses, it is true, have said that this was more severe than any other storm in many years, but the testimony of the men from the boats out in the sea that night, leads me to think that the public records fairly show the extent of that storm and the velocity of the wind. Of course the longer the wind blows the heavier the sea gets, if it continues from the same direction. As already found, the Noble was lost early in the storm, and the storm during the daytime on Tuesday, the 28th, had nothing to do with the disaster. I feel very certain that the witnesses who have said that this was the worst storm they had seen in many years, and who described the extent of that storm were describing what occurred on the 28th. The picture which they have in their minds is naturally the maximum of the storm. It is what they saw when this high wind had been blowing a long time that gave them the picture and has given character to their testimony.

Two mates from boats in the storm stated that they did not call their captains (the customary practice in severe weather); that they did not change the course of their boats on account of the storm. So the conclusion which I reach with reference to the wind and sea is that while it was a very heavy wind and a very heavy sea, the weather reports are not in conflict with the testimony of the oral witnesses, and that such a storm was not unusual, but was to be expected in that locality at that season of the year. The Noble, her master and owners, should have anticipated all these things including velocity and direction of the wind and the resulting sea.

Now, was the Noble seaworthy when loaded down so that her decks were within two inches of the water? Upon this branch of the case petitioner has called many witnesses, masters of experience, and the court gladly joins with counsel in what has been said about the courage and sturdy qualities of these men. I appreciate the responsibility which I am taking when I find contrary to what these men say is seaworthy. After listening to all of the testimony, I must make my own findings and reach my own conclusions. I must do it from the testimony. At the same time we can not help but be impressed with certain things. I think it is only fair to the record that I express myself freely. They are brave men, but they are afraid of their owners. Take the men on the ship; they are not afraid of the elements but they are afraid of the captain.

490 It is not the fault of the owners, and it is not the fault of the captains, but that is ship life. That rigid discipline is necessary. It has grown up with all of these years of doing things that way. Of all the men who come into court, I think none are more brave than the sailors, and at the same time none stand in greater fear of their boss. Undoubtedly it is a virtue rather than a fault. In any event, it is the situation. It applies as much to the relations between the master and the managing agent (or shore captains), as it does to the orders from captain to mate. That fear, boat discipline, or whatever name it may be known by, unfortunately follows them into the court room and the wishes of the boss are often more controlling than the oath. The sailor does not dare tell what occurs without permission of the captain and the captain would not think of making a statement before communicating with the office. So long as this condition exists it is necessary for courts to have it in mind in weighing testimony, particularly where only opinions of witnesses are to be considered. I am satisfied that this class of boats are often overloaded. I refer particularly to this class of small boats with bulwarks. The scuppers would discharge the water for washing down the decks, but when it comes to a storm and the waves coming over the top of the bulwarks, the amount of water the scuppers could carry off is not worth figuring on, and the gates are almost as deficient even if they were open. The gates open outward, the intention being that as the wind gets fresh and the sea gets high and the boat ships water, as she rolls to the starboard side the water will rush to the starboard side of the ship, and this gate which is hung at the top will swing out and the water run out, and that when she swings to port, the water will rush over to the port side, and the gate will swing to port and let the water run out that way. That is the theory. This boat, as stated, was built for the canal trade, 14½ foot draft. The blue print made of her by the man who designed her shows 14½ foot draft when loaded. There is testimony to indicate that as the ideal draft. Any draft which puts this boat down so that she can not discharge the water from her decks makes her dangerous and unseaworthy. If she gets out in any sea that is worthy of consideration at all (any sea that can be called a gale, like any one of these thirty-three gales in the month of April on the west end of Lake Superior in the last ten years), she is going to ship water in immense quantities, and she has got to discharge it if she continues to float. It

491 will readily be seen that as soon as you put her down with two inches of freeboard or even ten inches of freeboard, that as soon as she rolls to starboard and the water tries to be discharged from the starboard side of the ship the starboard bulwarks are down in the water, and the water holds the gates shut, and the water can not be discharged from her decks; the same thing results when she rolls to port. So she might just as well have bulwarks without gates as with them, and the gates in my judgment are not sufficient in size to carry off the water that would be shipped on her if you were going to put her down even to the maximum amount of freeboard described by any witness in this

case. If they are going to load a boat like this down anywhere near "decks to," she certainly ought not to have any bulwarks. She was built with bulwarks because she was intended to carry pulp wood with a cargo upon decks, and the pulp wood piled many feet high on the decks, would work along with the bulwarks to keep her from shipping seas. For the draft she was intended, $14\frac{1}{2}$ feet, and with the cargo she was intended, pulp wood, the bulwarks were all right and proper, but the bulwarks are not proper and of no assistance and are an absolute detriment to her when loaded with her decks near to the water. No use has been ascribed to them and every witness who expressed himself upon that subject states that they were a detriment rather than a help. Again, not wishing to be understood as being able to be accurate, when I come to the exact figures, but in order that this record may show as accurately as I can, I fix the very least freeboard that this vessel ought to have, if she was to encounter a gale (and by that I mean forty-mile wind, and the sea that goes with it), at 18 inches of freeboard. I am not undertaking to decide what is proper freeboard for any boat or time except the one in issue, but when a gale was reasonable to be expected, then the Noble should not have been loaded deeper than a mean draft of $16\frac{1}{2}$ feet which means a freeboard of 18 inches. So I find she was overloaded, that she encountered heavy seas and a storm, but no heavier and no greater than should have been reasonably anticipated and expected at that season of the year. The record shows that other vessels, both loaded and light, some of which were larger, some smaller, some built of wood and some of steel, were in the vicinity of the Noble in the same storm, and came through without difficulty or damage. There is no evidence

of any other vessel having suffered mishap on this occasion.
 492 I am satisfied that the captains who testified that the Noble was seaworthy have sailed their boats down where they say they have, but nearly all of them say they let them up in varying amounts in the fall of the year. Why? There is only one answer to it; that is because of the gales and storms. Now, if they ought to expect storms in the spring of the year, it follows that in the spring of the year these boats ought not to be loaded to their maximum, as this boat was. Moreover, the fact that other captains have been in the habit of overloading their vessels at this season, if true in fact, would not justify or relieve the owner in this case. In the case of *The Fitzgerald*, supra, it is said at page 687:

"And surely it can be no defense, if true in fact, that other owners of wooden vessels were also wanting in properly protecting similar holes in the floors of their lamp rooms. It is said in *The Tenedos* (D. C.), 137 Fed., 443, 446, 447, affirmed 151 Fed., 1022, 82 C. C. A., 671:

"But the fact that shipowners are not in the habit of using precautions which would demonstrate unseaworthiness is immaterial. They are bound to use them," citing the *Edwin I. Morrison*, 153 U. S., 199, 215, 14 Sup. Ct., 823, 38 L. Ed., 688."

Again, I am impressed with the fact that very few of the many who were called could or would say at what depth a boat becomes un-

seaworthy and dangerous. Counsel urge that the reason for that is because they have never loaded a boat to such a point, but know it is safe as deep as they have loaded. I am not impressed with that argument and I think it lessens the value of their opinion to the effect that this boat was seaworthy as loaded. To tell when it is light necessitates telling when it is dark; to tell what is deep necessitates telling what is shallow; to tell what is safe necessitates telling what is unsafe. To say that a man can testify that the speed of an automobile is safe up to a certain point, but that beyond that he can not testify what is dangerous, would not impress one with the value of the estimate placed as to safety. They qualify their ability to express an opinion in such a way that they never in any case could be witnesses for the other side and say that beyond that point it is unsafe and dangerous. I recognize the difficulty that the claimant in this case would have in getting masters to testify. In the first place they would have to get men who were sailing boats of that kind, and I am satisfied that it would be difficult
493 to get men who would be willing, in a case where it was simply an expression of opinion, to come into court and be witnesses against vessel owners. I think captains feel if they did that they would be jeopardizing their chances to get a boat of this class to sail the next year on the lakes, so long as owners want their boats loaded to that depth. The record may show as my conclusion that they are sailing this class of boats down there where they have testified they do in mid-summer months. No such practice has been shown for months when storms prevail. I think it is dangerous even in the summer months and that they are unseaworthy when they are down there. They get through, if they don't get in a storm. Sometimes they get in a storm and have good luck, and then they testify that their boat is safe because it got through. Captain Eisenhardt did not get through, and can not be a witness on the other side in any of these lawsuits to say it is dangerous. It seems to me it should take very strong proof to satisfy a court that a boat with bulwarks can be put down in the water almost "decks to" and be safe. Even if the gates are strapped up so they are wide open, still the water would run onto the deck, and the bulwarks would hold it to a great extent and prevent it from running off as it would do if there were no bulwarks.

The same conclusion is reached from the testimony of the experts as to buoyancy. In a boat of this type the buoyancy of the poop and fore-castle ought not to be taken into account. They have doors and if the crew want to get out and do anything on deck they would have to open the doors.

For this type of ship, with bulwarks, we ought not to figure any buoyancy above the decks, because you can not use that buoyancy until you get the decks under water. For safety the usual percentage of buoyancy (say 20% to 25%) ought to be found below decks, because you can not use what is above until you get the decks down under water, and when you get the decks under water you are in trouble. If a hatch should get loose in a heavy gale, the boat would have absolutely no chance because the men could not get back and

forth on a boat like this to do anything on deck if the decks were under water. The mere fact that some get through if they do not happen to get a loose hatch, and do not part a wheel chain, and everything works fine, does not justify their captains in testifying that they were seaworthy.

494 Now, who was to blame for the overloading? This boat was owned by a corporation, and like all corporations, had to do business through some one representing the corporation. In this case that individual was Mr. Francombe, the managing agent of the corporation. He was a man of mature years and ripe in experience. He was in all things pertaining to the lakes and to the management of this boat, the corporation; he represented that corporation and handled that boat with the same authority and the same freedom that he would manage his own boat. So he stands, so far as this question is concerned, in place of the corporation, and his faults are the faults of the corporation, and binding upon the corporation.

Great Lakes Towing Co. vs. Mill Transportation Co., (C. C. A., Sixth Circuit, 1907), 155 Fed., 11.

Benner Line vs. Pendleton, et al., supra.

In the case of Great Lakes Towing Company vs. Mill Transportation Company, supra, the Court of Appeals for this circuit said:

"The contracts of the manager are the actual contracts of the owner and are not of the same character as the contracts of the master made on a voyage or in foreign ports, and which are imputed to the owner from the necessities of commerce. The acts of the managing agent within the sphere of authority are as much the acts of the owner as if done by the owner himself. Only upon this theory could a corporation make what, for the purpose of making a distinction, is called a personal contract, that is to say, one which the owner himself or itself has made."

See also:

The Loyal, 204 Fed., 930;

In re Jeremiah Smith & Sons, 193 Fed., 395 (1911);

The Colima, 82 Fed., 665;

Craig vs. Continental Insurance Co., 141 U. S., 638;

Parsons vs. Empire Transportation Co., 111 Fed., 202;

Weisshaar vs. Kimball Steamship Co., 128 Fed., 397 (1904).

It is urged that it was the captain's judgment that controlled in this matter, and that he was the one who decided the cargo
495 and not Mr. Francombe. I can not agree with that contention. I think that the discretion which the captain used was no more than as to the trim of the ship; he decided whether he would stop at this particular ear or whether he would put on one more. But as to the great and important question here, as to whether this boat was loaded down almost "decks to," or whether she was loaded to 16-6, whether she had 3,000 tons or whether it was much less than that, 2,500 or 2,600 tons, that was not left to his discretion; that was Mr. Francombe's discretion. In fact, the telegram which Captain Eisenhardt sent to Mr. Francombe shows he did not want to take all the rails. The telegram sent back to Captain Eisenhardt did not mention the draft, and did not mention anything about safety. It

did say "Think 3,000 tons too much." I do not see how any other thought could have been entertained. A command from the owner to the captain is stronger than from the captain to the second mate, or the second mate to the deck hand. The telegram was not proper instructions. That was not directing a proper load to tell him to take all he could. That is just what the captain did; he just obeyed that command. He had never sailed in this boat before, and he had never been captain of any boat before. He had told Mr. Francombe that if he did not make good he need not pay him. Mr. Francombe told him if he did make good he would give him a bonus. He had 3,000 tons on the dock to take. Mr. Francombe wired him "Take all you possibly can." He did take it. When he got along up to Detroit, the managing agent went aboard of her, saw it, and talked with him about it, and the managing agent, with his experienced judgment, must have known she was overloaded, and yet he permitted her to go on her journey, thinking no doubt she would get through, and of course hoping she would get through.

It was the mistake and wrong doing of the owners of the vessel, and they are not entitled to limit their liability and they are responsible for the damages which resulted.

An interlocutory decree will be entered accordingly.

ARTHUR J. TUTTLE, *District Judge.*

496 *Stipulation as to Damages of Claimant, Cambria Steel Company.*

(Filed Nov. 29, 1915.)

Reference of the above entitled to a Commissioner to ascertain the amount of damages of claimant, Cambria Steel Company, is hereby waived, and it is stipulated and agreed by and between all the parties hereto that said claimant, Cambria Steel Company, has suffered damages by reason of the loss of its cargo of steel rails as described in the pleadings herein as follows: Value of and damage to cargo, Ninety-four Thousand, One Hundred Ninety-nine and 51/100 (94,199.51) Dollars, together with interest from April 28th, 1914.

And it is further stipulated and agreed that said amount above comprises the damage, exclusive of interest and costs, suffered by said claimant, Cambria Steel Company, by reason of the loss of its cargo of steel rails as described in the pleadings herein, and may be so found and determined by this Honorable Court as a part of the final decree to be entered pursuant to the interlocutory order heretofore entered herein.

Dated Nov. 24, 1915.

(Sgd.)

MILLER, SMITH, CANFIELD, PAD-
DOCK & PERRY,

G. L. C.,

(Sgd.)

HOLDING, MASTEN, DUNCAN &
LECKIE,

Proctors for Capitol Transportation Co.

WARREN, CADY, LADD & HILL,

Proctors for Cambria Steel Company.

Final Decree.

(Entered Nov. 29, 1915, by Judge A. J. Tuttle.)

This cause having been heard upon pleadings and proofs in open court, and after argument by proctors for the respective parties, and the cause having been tried on its merits and submitted to the
497 court for its determination, and due deliberation being had, and the court having delivered and filed herein its opinion in writing, and having thereupon entered an interlocutory decree wherein and whereby it finds that the petitioner, Capitol Transportation Company as owner of the Steamer "Benjamin Noble," is not entitled to limitation of its liability, and that said petitioner Capitol Transportation Company is liable for the damages sustained by claimant Cambria Steel Company referred to in the pleadings in this cause, and referring the same to a Commissioner to ascertain the damages of said claimant, Cambria Steel Company, and it appearing to the court that the parties have agreed upon the amount of said damages, and that the stipulation of all parties herein has been duly filed wherein it is agreed that claimant Cambria Steel Company has suffered damages by reason of the premises in the sum of Ninety-four Thousand, One Hundred Ninety-nine and 51/100 (94,199.51) Dollars, together with interest at the rate of five (5) per cent. from April 28th, 1914; and the court having ordered a decree to be entered in accordance with such finding. Now therefore, by reason of the premises it is ordered, adjudged and decreed that said claimant Cambria Steel Company have and recover of and from said Capitol Transportation Company the sum of \$94,199.51 with interest at the rate of five (5) per cent. per annum from April 28th, 1914, until said sums are paid, together with claimant's costs to be taxed.

And it is further ordered, adjudged and decreed that said sums be paid to the proctors for claimant, and that said proctors may enter complete satisfaction of this decree as to claimant upon the payment to them of said sums hereinbefore specified.

It is further ordered, adjudged and decreed that unless this decree be satisfied or proceedings thereon be stayed on appeal within the time limited and prescribed by the rules and practice of this court, the claimant Cambria Steel Company have execution against the petitioner Capitol Transportation Company to enforce satisfaction of this decree or of so much thereof as shall remain unsatisfied.

Done this 29 day of November, A. D. 1915.

ARTHUR J. TUTTLE,
District Judge.

O. K. as to form only.

MILLER, SMITH, CANFIELD, PADDOCK &
PERRY.

G. L. C.

498

Notice of Appeal.

(Filed June 8, 1916.)

Messrs. Warren, Cady, Ladd & Hill, Lewis, Adler & Laws.

SIRS: Please take notice that the petitioner above named has appealed from the final decree made and entered in said cause on November 29, 1915, to the United States Circuit Court of Appeals, for the Sixth Circuit.

True copies of the petition of appeal, assignment of errors and order allowing appeal are herewith handed you.

Yours, etc.,

MILLER, SMITH, CANFIELD, PADDOCK &
PERRY,

Proctors for Petitioner and Appellant.

Petition for Appeal.

(Filed Jan. 29, 1916.)

To the Judge of said Court:

Now comes the Capitol Transportation Company, petitioner in the above entitled cause, by Miller, Smith, Canfield, Paddock & Perry, its proctors, and feeling itself aggrieved by the final decree of this court in said cause made and entered on the 29th day of November, 1915, does hereby claim an appeal from the order of said decree to the United States Circuit Court of Appeals for the Sixth Circuit, and herewith presents and files its assignments of errors and prays that said appeal may be allowed and said cause certified to the said United States Circuit Court of Appeals for the Sixth Circuit, and that this court will fix the amount of the appeal bond to be given by this petitioner and appellant.

Dated, Detroit, Michigan, December 20, 1915.

MILLER, SMITH, CANFIELD, PADDOCK &
PERRY,

Proctors for Appellants.

499

Order Allowing Appeal.

(Entered Jan. 29, 1916, by Judge A. J. Tuttle.)

The petition of the Capitol Transportation Company, petitioner in the above entitled cause, praying for an appeal in the above entitled cause to the United States Circuit Court of Appeals for the Sixth Circuit, having been filed herein and it appearing to the court that said petitioner has filed its assignment of errors as required by the rules of the said United States Circuit Court of Appeals,

It Is Ordered that said appeal be, and the same is hereby allowed

as prayed and the amount of the bond for costs to be given on such appeal is fixed at Five Hundred Dollars;

And It Is Further Ordered that within sixty (60) days a transcript of the record herein be transmitted to the said United States Circuit Court of Appeals for the Sixth Circuit.

Dated, Detroit, Michigan, January 29th, 1916.

ARTHUR J. TUTTLE,

*Judge of the District Court of the United
States for the Eastern District of Michigan.*

Assignment of Errors.

(Filed Jan. 29, 1916.)

Now comes the Capitol Transportation Company, petitioner and appellant in the above entitled cause, by Miller, Smith, Canfield, Paddock and Perry, its proctors, and says that in the record and proceedings in said cause, and in the final decree entered therein on November 29, 1915, the said District Court erred:

1. In holding that the said petitioner, as owner of the steamer "Benjamin Noble" was not entitled to limitation of its liability.

500 2. In holding that the said petitioner was liable for the damages sustained by the Cambria Steel Company referred to in the pleadings in this cause.

3. In decreeing that the said Cambria Steel Company recover of and from the said Capitol Transportation Company the sum of \$94,199.51, with interest at the rate of five per cent. per annum from April 28, 1914.

4. In entering an affirmative decree against the petitioner under the pleadings and proofs in said cause.

5. In finding and holding, in the Court's opinion,

"I am satisfied and find that the Noble foundered because she was overloaded."

6. In holding, in said opinion, that the Noble was unseaworthy.

7. In holding, in said opinion, as follows:

"The claimant- having shown that they made this contract directly with the owners of the vessel, to carry these rails, and that they were actually delivered to the private carrier, and received a bill of lading and receipt therefor, and then having proved that the cargo never reached its destination and was never delivered to the consignee, the claimant could then rest its case, and the burden would shift to the petitioner in this case to prove the competency of its crew and the seaworthiness of its vessel."

8. In holding, in said opinion,

"I am satisfied that this particular class of boats are overloaded."

9. In holding, in said opinion,

"I am satisfied and find that the Noble foundered because she was overloaded."

10. In holding, in said opinion,

"This boat was owned by a corporation, and like all corporations,

had to do business through some one representing the corporation. In this case that individual was Mr. Francombe, the managing agent of the corporation. He was a man of mature years and ripe in experience. He was in all things pertaining to the lakes and to the management of this boat, the corporation; he represented that corporation and handled that boat with the same authority and the same freedom that he would manage his own boat. So he stands, so far as this question is concerned, in place of the corporation, and his faults are the faults of the corporation, and binding upon the corporation."

11. In disregarding all the testimony presented by the petitioner as to the seaworthiness of the "Benjamin Noble."

12. In finding, in said opinion,

"I do not think it was the judgment of Captain Eisenhardt that determined this overload."

13. In holding, "It was the mistake and wrongdoing of the owners of the vessel, and they are not entitled to limit their liability and they are responsible for the damages which resulted."

14. In not holding that the Insurance Company of North America was not entitled to enforce the said claim in the name of the Cambria Steel Company.

15. In failing to grant the petitioner the relief prayed in its petition.

16. In not holding that the Capitol Transportation Company is entitled to a decree limiting its liability as prayed for in its petition filed in this cause.

17. In not finding that the loss of the steamer "Benjamin Noble" and her cargo was due to and resulted from perils or dangers of navigation and other perils within the exceptions contained in the bill of lading under which said cargo was shipped.

18. In not finding that, if the loss of the "Benjamin Noble" was caused by overloading, such overloading was done by the shipper of said cargo and no recovery could be had by it for any loss resulting therefrom.

19. In not dismissing the claim of the Cambria Steamship Company against the petitioner personally, with costs.

Wherefore petitioner prays that for the errors aforesaid, and other errors appearing in the record of said cause, that the decree of said District Court may be reversed with costs, and that a decree may be ordered entered in said cause granting them the relief prayed for in their petition for limitation of liability.

Detroit, January 24, 1916.

MILLER, SMITH, CANFIELD, PADDOCK &
PERRY,

*Proctors for Capitol Transportation —,
Petitioner and Appellant.*

502

Bond for Costs on Appeal.

(Filed Feb. 12, 1916.)

Know All Men By These Presents, That the Capitol Transportation Company, petitioner in the above entitled cause, as principal,

and The United States Fidelity & Guaranty Co., of Baltimore, Maryland, as surety, are held and firmly bound unto the Cambria Steel Company, a corporation, in the sum of Nine Hundred Dollars (\$900.), to which payment well and truly to be made we bind ourselves, our successors and assigns, jointly and severally by these presents.

Scaled with our seals, and dated this 11th day of February, A. D. 1916.

The Condition of This Obligation Is Such, That whereas the above bounden principal, the Capitol Transportation Company, petitioner in the above entitled cause, has appealed to the United States Circuit Court of Appeals for the Sixth Circuit, from the final decree of the District Court of the United States for the Eastern District of Michigan, in Admiralty, made and entered in the above entitled cause on November 29th, 1915.

Now, Therefore, If the above named appellant shall prosecute its appeal to effect, and answer all costs if it fails to make its appeal good, then the above obligation to be void; otherwise to remain in full force and effect.

[SEAL.]

CAPITAL TRANSPORTATION CO.
JNO. G. DIETZ, *Sec.*

[SURETY CO. SEAL.]

THE UNITED STATES FIDELITY &
GUARANTY CO.,
By WM. H. McBRYAN,

Its Attorney in Fact.

I hereby approve the foregoing bond as to sufficiency and form.

ARTHUR J. TUTTLE,
District Judge.

February 12th, 1916.

O. K. as to form.
S. A. H.

503

Citation.

United States Circuit Court of Appeals for the Sixth Circuit.

UNITED STATES OF AMERICA,
Sixth Judicial Circuit, ss:

To Cambria Steel Company, Greeting:

You are hereby cited and admonished to be and appear at a session of the United States Circuit Court of Appeals to be holden at the City of Cincinnati, in said Circuit, on the* 28th day of February next, pursuant to an appeal filed in the Clerk's Office of the District Court of the United States for the Eastern District of Michigan, wherein The Capitol Transportation Company as owner of the Steamer "Benjamin Noble," is appellant, and you are appellees, to show cause, if any there be, why the decree rendered against the said

appellant in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward Douglass White, Chief Justice of the United States, this 29th day of January in the year of our Lord one thousand nine hundred and sixteen, and of the Independence of the United States of America the one hundred and fortieth.

ARTHUR J. TUTTLE,
*United States District Judge, Eastern
District of Michigan.*

*Not exceeding 30 days from the day of signing.

Due and timely service of the within citation is hereby accepted this 7th day of February, 1916.

WARREN, CADY, LADD & HILL,
Proctors for Appellee.

504

Stipulation as to Exhibits.

Filed June 1, 1916.

It is stipulated and agreed that the following exhibits need not be incorporated in the printed record, but may be certified to by the clerk and forwarded by him to the court above, and may be used in argument by either party, viz:

- Exhibit 5 —Policy.
- Exhibit 6 —Certificate.
- Exhibit 18 —Blue Print.
- Exhibit 19 —Blue Print.
- Exhibit 20 —Blue Print.
- Exhibit 20½—Blue Print.
- Exhibit 35 —Bills of Lading, tabulation.
- Exhibit 37 —Bills of Lading.
- Exhibit 38 —Weather Report—Detroit River.
- Exhibit 39 —Weather Report—Lake Erie.
- Exhibit 40 —Statement of Pollock.
- Exhibit 41 —Statement of Brims.
- Exhibit 17 —Large Photo.

The Congressional Record, introduced in evidence in the court below, may be used in the argument on appeal.

Dated: Detroit, Mich., May 29, 1916.

MILLER, SMITH, CANFIELD, PADDOCK &
PERRY, *Proctors for Petitioner.*
WARREN, CADY, LADD & HILL,
Proctors for Cambria Steel Co.

Calendar Entries.

- 1 July 22, 1914. Petition for Limitation of Liability, filed.
 - 2 July 22, 1914. Order for Transfer to Charles C. Simons, trustee filed and entered.
- 505
- 3 July 23, 1914. Proof of Compliance with Order for transfer to Trustee, filed.
 - 4 July 23, 1914. Order for Monition and Restraining Order, filed and entered.
 - 5 July 29, 1914. Monition issued returnable November 3, 1914 at 10 A. M.
 - 6 Aug. 28, 1914. Marshal's return on service of Cert. Copy of Monition at Philadelphia, filed and entered.
 - 7 Aug. 28, 1914. Marshal's return on service of Order for Monition and Restraining Order at Philadelphia, fled and entered.
 - 8 Sept. 5, 1914. Claim and Answer of the Cleveland & Buffalo Transit Co., filed.
 - 9 Oct. 22, 1914. Claim of the Cambria Steel Company filed.
 - 10 Oct. 22, 1914. Answer of the Cambria Steel Company, filed.
 - 11 Feb. 1, 1915. Answer of Petitioner to Claim of Cambria Steel Company, filed.
 - Feb. 2, 1915. Subpœna duces tecum issued.
 - Feb. 4, 1915. 2 subpœna- ad tes. issued.
 - 12 Feb. 8, 1915. Petition for Issuance of Letters Rogatory, filed.
 - 13 Feb. 8, 1915. Order directing issue of Letter Rogatory filed and entered.
 - 14 Feb. 8, 1915. Letters Rogatory issued.
 - 15 Feb. 8, 1915. Order for Production of Records, etc., filed and entered.
 - Feb. 13, 1915. 2 Subpœnas issued.
 - 16 Feb. 13, 1915. Order to Produce plans, drawings and specifications, filed and entered.
 - 17 Feb. 13, 1915. Order to Produce certain specifications and drawings, filed and entered.
 - 18 Feb. 13, 1915. Order to produce certain correspondence, filed and entered.
 - 19 Feb. 16, 1915. Depositions of Fred Benson, William Brasher et al., filed.
 - Feb. 16, 1915. Hearing begins.
 - Feb. 17, 1915. Hearing in progress.
 - Feb. 18, 1915. Hearing in progress.
 - Feb. 19, 1915. Hearing in progress.
 - Feb. 20, 1915. Argued in part.
 - Feb. 22, 1915. Arguments continued.

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- Feb. 23, 1915. Arguments continued.
- Feb. 24, 1915. Arguments continued.
- Feb. 25, 1915. Memorandum decree denying petition for Limitation of Liability and allowing Claim of Cambria Steel Company and referring claim to Wm. S. Sayres, Jr., as Commissioner, to ascertain and report damages—entered.
- May 20, 1915. Monition returned, not served by order of attorneys, filed and entered.
- 20 Nov. 29, 1915. Stipulation as to damages of Claimant Cambria Steel Co., filed.
- 21 Nov. 29, 1915. Final Decree that S. S. "Benjamin Noble" is not entitled to limitation of liability, etc., filed and entered.
- 22 Jany. 29, 1916. Petition for Appeal.
- 23 Jany. 29, 1916. Assignment of Errors, filed.
- 24 Jany. 29, 1916. Order allowing appeal filed entered.
- 25 Jany. 29, 1916. Citation issued.
- Jany. 29, 1916. Citation with acceptance of service, filed.
- 26 Feby. 12, 1916. Bond on Appeal in sum of \$900.00 filed. U. S. Fidelity & Guaranty Co., surety.
- 27 Feby. 23, 1916. Opinion filed.
- 28 Feby. 28, 1916. Order Extending time to file and docket record on appeal to Apr. 28, '16, filed and entered.
- 29 Apr. 29, 1916. Order extending time to file and docket record on appeal to May 28, '16, filed and entered.
- 30 May 27, 1916. Order Extending time to file and docket record on appeal to June 28, '16, filed and entered.
- 31 June 1, 1916. Stipulation as to exhibits in appeal record, filed.
- 32 June 3, 1916. Præcipe as to contents of record on appeal, filed.
- 33 June 6, 1916. Amendment to answer of petitioner to claim of Cambria Steel filed.
- 34 June 8, 1916. Notice of Appeal.

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Præcipe for Appeal Bond.

(Filed June 3, 1916.)

To the Clerk of Said Court:

You are hereby requested to make transcript of the following papers to be filed in the United States Circuit Court of Appeals for the Sixth Circuit, pursuant to the appeal allowed in the above entitled cause, and in accordance with the provisions of General Admiralty Rule 52, to-wit:

Petition of the Capitol Transportation Company for limitation of liability as owner of the Steamer "Benjamin Noble."

Order for monition and restraining order.

Monition.

Claim of Cambria Steel Company.

Answer and claim of Cambria Steel Co.

Answer of petitioner to claim of Cambria Steel Company.

Amendment to answer of petitioner.

Order for production of records, etc. (15.)

Order to produce certain specifications, etc. (17.)

Order for production of certain correspondence. (18.)

Testimony and depositions and exhibits on behalf of Cambria Steel Company.

Testimony and depositions and exhibits on behalf of petitioner.

Oral opinion of court.

Signed opinion of court.

Stipulation as to damages.

Final decree.

Petition of appeal of petitioner and notice.

Assignment of errors.

Allowance of appeal.

Bond for costs on appeal.

Citation.

Stipulation as to exhibits.

Calendar entries.

Præcipe for record.

Certificate of clerk.

MILLER, SMITH, CANFIELD, PADDOCK &
PERRY,

Proctors for Petitioner.

508 *Order Extending Time to File and Docket Appeal Record to and Including April 28, 1916.*

(Entered February 28, 1916, by Judge Tuttle.)

Upon the application of the clerk of this court for cause shown, it is by the court now here ordered that the time in which to file and docket printed record on appeal in this cause be and the same is hereby extended to and including the 28th day of April, 1916.

ARTHUR J. TUTTLE,

United States District Judge.

Order Extending Time to File and Docket Printed Record on Appeal to and Including May 28, 1916.

(Entered April 28, 1916, by Judge Tuttle.)

Upon the application of the clerk of this court for cause shown, it is by the court now here ordered that the time in which to file and

docket printed record on appeal in this cause be and the same is hereby extended to and including the 28th day of May, 1916.

ARTHUR J. TUTTLE,

Judge United States District Court.

509 *Order Extending Time to File and Docket Printed Record on Appeal to and Including June 28, 1916.*

(Entered May 27, 1916, by Judge Tuttle.)

Upon the application of the clerk of this court for cause shown, it is by the court now here ordered that the time in which to file and docket printed record on appeal in this cause, be and the same is hereby extended to and including the 28th day of June, 1916.

ARTHUR J. TUTTLE,

United States District Judge.

Order Extending Time to File and Docket Printed Record on Appeal to and Including July 28, 1916.

Upon the application of the clerk of this court, for cause shown, it is by the court now here ordered that the time in which to file and docket printed record on appeal in this cause, be and the same is hereby extended to and including the 28th day of July, 1916.

ARTHUR J. TUTTLE,

United States District Judge.

Order Extending Time to File and Docket Printed Record on Appeal to Aug. 25, 1916.

(Entered July 20, 1916, by Judge Tuttle.)

Upon the application of the clerk of this court, for cause shown, it is by the court now here ordered that the time in which to file and docket printed record on appeal in this cause, be and the same is hereby extended to and including the 25th day of August, 1916.

ARTHUR J. TUTTLE,

United States District Judge.

510

EXHIBIT 1.

Bill of Lading.

No. 1.

Conneaut Harbor, O., April 18th, 1914.

Shipped, in good order and well conditioned, by Cambria Steel Company for account and at the risk of whom it may concern, on board of the Steamer "Benj. Noble" whereof J. Eisenhardt is Master, the following articles, as here marked and described to be delivered in like good order and condition, as addressed in the margin, or to his or their assigns or consignees, upon paying the freight and

charges as noted below (the dangers of navigation, fire and collision excepted).

In Witness Whereof, the Master of said Vessel hath affirmed to three Bills of Lading of this tenor and date, one of which being accomplished the others to stand void.

Great Northern Railway Co.,
Superior Wis.,

2852 Gross Tons 700 lbs. 6461—90# Steel Rails

6105—33 ft. 90#—1st. Quality Rails

207—32 " " " " "

78—31 " " " " "

35—28 " " " " "

35—26 " " " " "

1—25 " " " " "

6461 Rails loaded in hold of vessel.

99 Gross Tons 140 lbs. 224—90#—33 ft. 2nd. Quality Rails
loaded in hold of vessel on top of 1st. Quality Rails.

Lake Freight .80¢ per gross ton,

CAPT. J. EISENHARDT.

Not insured by M. A. Hanna & Co.

Copy—Not Negotiable.

Endorsed: Cambria Steel Company, by J. L. Replogle, Vice President & Gen'l Mgr. of Sales. Great Northern Ry., by F. A. Bishwell, Purchasing Agent.

511

EXHIBIT 2.

Railroad Weights.

STATE OF PENNSYLVANIA,
County of Cambria, ss:

Personally appeared before me, the undersigned, a notary public in the aforesaid county, Charles H. Alter, who having been duly sworn according to law, states that he is chief shipper of the rail mill of Cambria Steel Company and that the foregoing and attached copies of invoices of steel rails, consigned by Cambria Steel Company to the Great Northern Railway Company, Alongside Dock, Superior Wisconsin, c/o Steamship "Benjamin Noble," Conneaut Harbor, Ohio, are correct copies of the rails actually shipped, and that the weights given therein are true and correct.

CHARLES H. ALTER.

Sworn to and subscribed before me this eighth day of February, 1915.

[SEAL.]

PLUMA F. LONGSHORE,

Notary Public.

Commission expires Feb. 21, 1915.

512 For use in connection with the Uniform Straight Bill of Lading, rules and conditions approved by the Interstate Commerce Commission, by Order 787, June 27th, 1908.

This Memorandum is an acknowledgment that a Bill of Lading has been issued and is not the original Bill of Lading, nor a copy or duplicate, covering the property named herein and is intended solely for filing or record.

Pennsylvania Railroad Company.

Agent's No. —.

Received, subject to the classifications and tariffs in effect on the date of the receipt by the carrier of the property described in the Original Bill of Lading, at Johnstown, Pa., from Cambria Steel Company, the property described below, in apparent good order, except as noted (contents and condition of packages unknown), marked, consigned and destined as indicated below, which said Company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

Date, April 8, 1914.

Consigned to Great Northern Railway Company,
Alongside Dock, Superior, Wis.,
c/o S. S. "Benjamin Noble," Conneaut Harbor, O.
Route P. R. R. c/o B. & L. E. R. R. at Butler, Pa.

Customer's Order 2/24/14.
Mill Order 13980.
Price No. C. G. 433.
Shipper's No. R-373.
Freight Prepaid to Conneaut Harbor.

Cars.			Sec. No.	Lbs. per yard.	Std'd No.	Number of rails of each length 33'	Total.	Weights.	
Initials.	Numbers.	Capacity.						Pounds.	Tons.
P. L.	799506	...	560	90	1 O. H.	111	111	110,200	...
P. L.	793085	...	...	..	.....	111	111	110,280	...
P. L.	863555	...	...	..	.....	111	111	110,180	...
P. L.	863481	...	...	..	.....	111	111	110,080	...
P. R. R. ...	384881	...	...	..	.....	111	111	110,400	...
P. R. R. ...	334872	...	...	..	.....	111	111	110,200	...
P. R. R. ...	335912	...	...	..	.....	111	111	110,440	...
							777	771,780	344 1,220

Dunnage 1820 Lbs. (260 Lbs. on each car.)

The Rate of Freight from Johnstown, Pa., to.

If... Times 1st.....	If 1st Class.....	If 2d Class.....	is in cents per 100 Lbs.
..... If Rule 26.....	..... If Rule 28.....	..... If 4th Class.....	If 3d Class
..... If Special per.....	..... If Special per.....	..... If 5th Class.....	If 6th Class
If charges are to be prepaid, write or stamp here: To Be Prepaid.			
Received \$.....	..... to apply in prepayment of the charges on the property described hereon.	.....	.....
(The signature here acknowledges only the amount prepaid.)			
Charges Advanced: \$.....	Agent or Cashier. Per .....	.....	.....
Cambria Steel Company, Shipper.	.....	.....	.....
Per.....	.....	Per.....	Agent.

NOTE.—Printed matter on back omitted by stipulation of Counsel for respective parties.

514

For use in connection with the Uniform Straight Bill of Lading, rules and conditions approved by the Interstate Commerce Commission, by Order 787, June 27th, 1908.

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Pennsylvania Railroad Company.

Agent's No. —.

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Date, April 9, 1911.

Consigned to Great Northern Railway Company,
Alongside Dock, Superior, Wis.,
% S. S. "Benjamin Noble," Conneaut Harbor, O.
Route P. R. R. % B. & L. E. R. R. at Butler, Pa.

Customer's Order 2/24/14.

Mill Order 13980.

Price No. C. G. 433.

Shipper's No. R-376.

Freight Prepaid to Conneaut Harbor.

Initials.	Cars.		Sec. No.	Lbs. per yard.	Std. No.	Number of rails of each length 33'	Total.	Weights.	
	Numbers.	Capacity.						Pounds.	Tons.
P. L.	858637	...	560	90	1 O. H.	111	111	110,000	...
P. L.	859417	...	...	...	...	111	111	110,000	...
P. L.	807240	...	...	...	...	111	111	110,000	...
P. R. R. ...	335213	...	...	...	...	111	111	110,000	...
"	335265	...	...	...	...	111	111	110,100	...
"	334269	...	...	...	...	111	111	109,900	...
"	384850	...	...	...	...	111	111	109,500	...
"	335357	...	...	...	...	111	111	110,000	...
P. & R.	28458	...	...	...	...	111	111	109,900	...
							999	989,400	441
									1,560

Dunnage 2340 Lbs. (260 Lbs. to each car.)

The Rate of Freight from Johnstown, Pa., to.....

If.....	Times 1st.....	If 1st Class.....	If 2d Class.....	..... is in cents per 100 Lbs.
.....	If Rule 26.....	If Rule 28.....	If Rule 25.....	If 3d Class
.....	If Special per.....	If Special per.....	If 4th Class.....	If 5th Class
If charges are to be prepaid, write or stamp here: To Be Prepaid.				
Received \$..... to apply in prepayment of the charges on the property described hereon.				
(The signature here acknowledges only the amount prepaid.)				
Charges Advanced: \$.....				
Cambria Steel Company, Shipper.				
Per..... Agent.				
Per.....				

NOTE.—Printed matter on back omitted by stipulation of Counsel for respective parties.

516 For use in connection with the Uniform Straight Bill of Lading, rules and conditions approved by the Interstate Commerce Commission, by Order 787, June 27th, 1908.
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Pennsylvania Railroad Company.

Agent's No. —.

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Date, April 9, 1914.

Consigned to Great Northern Railway Company,
Alongside Dock, Superior, Wis.,
% S. S. "Benjamin Noble," Conneaut Harbor, O.
Route P. R. R. % B. & L. E. at Butler, Pa.

Customer's Order 2/24/14.
Mill Order 13980.
Price No. C. G. 433.
Shipper's No. R-379.
Freight Prepaid to Conneaut Harbor.

517

Initials.	Cars.		Sec. No.	Lbs. per yard.	Std. No.	Number of rails of each length 33'	Total.	Weights.	
	Numbers.	Capacity.						Pounds.	Tons. Pounds.
P. L.	858956	...	560	90	1 O. H.	111	111	109,900	...
P. L.	852767	...	...	...	...	111	111	110,000	...
P. L.	853065	...	...	...	...	111	111	109,900	...
P. L.	852518	...	...	...	...	111	111	110,000	...
P. R.	334596	...	...	...	...	111	111	109,800	...
"	384360	...	...	...	...	111	111	109,700	...
"	356651	...	...	...	...	111	111	109,800	...
"	368264	...	...	...	...	111	111	109,900	...
"	368081	...	...	...	...	111	111	110,000	...
"	334761	...	...	...	...	111	111	109,900	...
Dunnage 2600 Lbs. (260 Lbs. on each car.)							1,110	1,098,900	490 1,300

The Rate of Freight from Johnstown, Pa., to..... is in cents per 100 Lbs.

If..... Times 1st..... If 1st Class..... If Rule 25..... If 3d Class.....

..... If Rule 26..... If 2d Class..... If Rule 25..... If 3d Class.....

..... If Special per..... If 4th Class..... If 5th Class..... If 6th Class.....

If charges are to be prepaid, write or stamp here: To Be Prepaid.....

Received \$..... to apply in prepayment of the charges on the property described hereon.

(The signature here acknowledges only the amount prepaid.)

Charges Advanced: \$..... Agent or Cashier. Per.....

Cambria Steel Company, Shipper.....

Per..... Agent.

NOTE.—Printed matter on back omitted by stipulation of Counsel for respective parties.

518

For use in connection with the Uniform Straight Bill of Lading, rules and conditions approved by the Interstate Commerce Commission, by Order 787, June 27th, 1908.

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Pennsylvania Railroad Company.

Agent's No. —.

Received, subject to the classifications and tariffs in effect on the date of the receipt by the carrier of the property described in the Original Bill of Lading, at Johnstown, Pa., from Cambria Steel Company, the property described below, in apparent good order, except as noted (contents and condition of packages unknown), marked, consigned and destined as indicated below, which said Company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

Date, April 10, 1914.

Consigned to Great Northern Railway Company,
Alongside Dock, Superior, Wis.,

% S. S. "Benjamin Noble," Conneaut Harbor, O.
Route P. R. R. % B. & L. E. R. R. at Butler, Pa.

Customer's Order 2/24/14.

Mill Order 13980.

Price No. C. G. 433.

Shipper's No. R-380.

Freight Prepaid to Conneaut Harbor.

519

Initials.	Cars.		Sec. No.	Lbs. per yard.	St'd No.	Number of rails of each length	Total.	Weights.	
	Numbers.	Capacity.						Pounds.	Tons.
P. R. R.	356093	...	560	90	1 O. H.	111	111	109,800	...
"	368037	...	...	...	...	111	111	110,100	...
"	336612	...	...	...	...	111	111	110,300	...
P. L.	852724	...	...	...	...	111	111	110,000	...
"	859289	...	...	...	...	111	111	110,100	...
"	807322	...	...	...	...	111	111	110,200	...
							666	660,500	294
									1,940

Dunnage 1560 Lbs. (260 Lbs. on each car.)

The Rate of Freight from Johnstown, Pa., to..... is in cents per 100 Lbs.

If..... Times 1st..... If 1st Class..... If 2d Class..... If Rule 25..... If 3d Class.....

..... If Rule 26..... If 4th Class..... If 5th Class..... If 6th Class.....

..... If Special per..... If Special per.....

If charges are to be prepaid, write or stamp here: To Be Prepaid.....

Received \$..... to apply in prepayment of the charges on the property described hereon.

(The signature here acknowledges only the amount prepaid.)

Charges Advanced: \$..... Agent or Cashier. Per.....

Cambria Steel Company, Shipper.Agent.

Per..... Per.....

NOTE.—Printed matter on back omitted by stipulation of Counsel for respective parties.

This Memorandum is an acknowledgment that a Bill of Lading has been issued and is not the original Bill of Lading, nor a copy or duplicate, covering the property named herein and is intended solely for filing or record.

Pennsylvania Railroad Company.

Agent's No. —.

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Date, April 10, 1914.

Consigned to Great Northern Railway Company,
 Alongside Dock, Superior, Wis.,
 % S. S. "Benjamin Noble," Conneaut Harbor, O.
 Route P. R. R. % B. & L. E. R. R. at Butler, Pa.

Customer's Order 2/24/14.
 Mill Order 13980.
 Price No. C. G. 433.
 Shipper's No. 384.
 Freight Prepaid to Conneaut Harbor.

624

Initials.	Cars.		Sec. No.	Lbs. per yard.	Std. No.	Number of rails of each length	Weights.		
	Numbers.	Capacity.					Pounds.	Tons.	Pounds.
P. L.	822898	...	560	90	1 O. H.	111	111	110,700	...
P. L.	807211	...	...	..	...	111	111	110,500	...
P. R.	334471	...	...	..	...	111	111	110,600	...
"	367912	...	...	..	...	111	111	110,700	...
"	337611	...	...	..	...	111	111	110,500	...
P. L.	858442	...	...	..	...	111	111	110,500	...
P. R.	336349	...	...	..	...	111	111	110,800	...
P. L.	859682	...	...	..	...	111	111	110,700	...
P. L.	859664	...	...	..	...	111	111	110,800	...
P. L.	858192	...	...	..	...	111	111	110,600	...
P. L.	852579	...	...	..	...	111	111	110,700	...
P. R.	337018	...	...	..	...	111	111	110,600	...
							1,332	1,327,700	592 1,620

Dunnage 3120 Lbs. (260 Lbs. on each car.)

The Rate of Freight from Johnstown, Pa., to..... is in cents per 100 Lbs.

If..... Times 1st..... If 1st Class..... If 2d Class..... If Rule 25..... If 3d Class

..... If Rule 26..... If 28..... If 4th Class..... If 5th Class..... If 6th Class

..... If Special per.....

If charges are to be prepaid, write or stamp here: To Be Prepaid, to apply in prepayment of the charges on the property described hereon.

Received \$..... Agent or Cashier. Per.....

(The signature here acknowledges only the amount prepaid.)

Charges Advanced: \$.....

Cambria Steel Company, Shipper.

Per..... Agent.

NOTE.—Printed matter on back omitted by stipulation of Counsel for respective parties.

522

For use in connection with the Uniform Straight Bill of Lading, rules and conditions approved by the Interstate Commerce Commission, by Order 787, June 27th, 1908.

This Memorandum is an acknowledgment that a Bill of Lading has been issued and is not the original Bill of Lading, nor a copy or duplicate, covering the property named herein and is intended solely for filing or record.

Pennsylvania Railroad Company.

Agent's No. —.

Received, subject to the classifications and tariffs in effect on the date of the receipt by the carrier of the property described in the Original Bill of Lading, at Johnstown, Pa., from Cambria Steel Company, the property described below, in apparent good order, except as noted (contents and condition of packages unknown), marked, consigned and destined as indicated below, which said Company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

Date, April 11, 1914.

Consigned to Great Northern Railway Company,

Alongside Dock, Superior, Wis.,

% S. S. "Benjamin Noble," Conneaut Harbor, O.

Route P. R. R. % B. & L. E. R. R. at Butler, Pa.

Customer's Order 2/24/14.

Mill Order 13980.

Price No. C. G. 433.

Shipper's No. R-385.

Freight Prepaid to Conneaut Harbor.

Initials.	Cars.		Sec. No.	Lbs. per yard.	St'd No.	Number of rails of each length 33'	Total.	Weights.	
	Numbers.	Capacity.						Pounds.	Tons.
P. L.	807226	...	560	90	1 O. H.	111	111	110,400	...
P. L.	859732	...	...	..	.....	111	111	110,500	...
P. L.	858448	...	...	..	.....	111	111	110,300	...
P. R. R.	355579	...	...	..	.....	111	111	110,500	...
P. R. R.	336031	...	...	..	.....	111	111	110,400	...
							555	552,100	246
									1,060

Dunnage 1300 Lbs. (260 Lbs. on each car.)

The Rate of Freight from Johnstown, Pa., to.....

If..... Times 1st..... If 1st Class..... If 2d Class..... is in cents per 100 Lbs.
..... If Rule 26..... If Rule 28..... If 4th Class..... If 5th Class..... If 6th Class.....

..... If Special per..... If Special per.....

If charges are to be prepaid, write or stamp here: To Be Prepaid.....

Received \$..... to apply in prepayment of the charges on the property described hereon.

(The signature here acknowledges only the amount prepaid.)

Charges Advanced: \$..... Agent or Cashier. Per.....

Cambria Steel Company, Shipper.....

Per..... Per..... Agent.

NOTE.—Printed matter on back omitted by stipulation of Counsel for respective parties.

524

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Pennsylvania Railroad Company.

Agent's No. —.

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Date, April 11, 1914.

Consigned to Great Northern Railway Company,
Alongside Dock, Superior, Wis.,
% S. S. "Benjamin Noble," Conneaut Harbor, O.
Route P. R. R. % B. & L. E. at Butler, Pa.

Customer's Order 2/24/14.

Mill Order 13980.

Price No. C. G. 433.

Shipper's No. R-386.

Freight Prepaid to Conneaut Harbor.

Initials.	Cars.		Sec. No.	Lbs. per yard.	Std No.	Number of rails of each length										Weights.				
	Numbers.	Capacity.				33'	32'	31'	28'	26'	25'	Total.	Pounds.	Tons.	Pounds.					
P. R. R.	...	356942	560	90	1 O. H.	...	63	31	16	9	1	120	110,300	...	...			
"	...	356061	...	"	...	...	74	25	10	9	..	118	109,800	...	...			
"	...	356389	...	"	...	111	..	..	..	..	..	111	110,300	...	...			
"	...	356666	...	"	...	111	..	..	..	..	..	111	109,800	...	...			
"	...	383948	...	"	...	111	..	..	..	..	..	111	110,200	...	...			
													571	550,400	245	1,600				
P. L.	858428	560	90	2 O. H.	112											112	111,000	49	1,240

Dunnage 1560 Lbs. (260 Lbs. to each car.)

The Rate of Freight from Johnstown, Pa., to.....
If..... Times 1st..... is in cents per 100 Lbs.
If Rule 26..... If 2d Class..... If Rule 25..... If 3d Class
If Special per..... If 4th Class..... If 5th Class..... If 6th Class
If charges are to be prepaid, write or stamp here: To Be Prepaid.
Received \$..... to apply in prepayment of the charges on the property described hereon.
(The signature here acknowledges only the amount prepaid.)
Charges Advanced: \$.....
Cambria Steel Company, Shipper.
Per..... Agent.

NOTE.—Printed matter on back omitted by stipulation of Counsel for respective parties.

526

For use in connection with the Uniform Straight Bill of Lading, rules and conditions approved by the Interstate Commerce Commission, by Order 787, June 27th, 1908.

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Pennsylvania Railroad Company.

Agent's No. —.

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Date, April 11, 1914.

Customer's Order 2/24/14.

Mill Order 13980.

Price No. C. G. 433.

Shipper's No. R-387.

Freight Prepaid to Conneaut Harbor.

Consigned to Great Northern Railway Company,

Alongside Dock, Superior, Wis.,

% S. S. "Benjamin Noble," Conneaut Harbor, O.

Route P. R. R. & L. E. R. R. at Butler, Pa.

527

Initials.	Cars.		Sec. No.	Lbs. per yard.	Std No.	Number of rails of each length							Total.	Weights.	
	Numbers.	Capacity.				33'	32'	31'	28'	26'	Pounds.	Tons.		Pounds.	
P. R. R.	334807	...	560	90	1 O. H.	...	70	22	9	17	118	108,600	....	....
"	337542	...	...	..	.....	111	..	..	..	..	111	109,400	....	....
"	335803	...	...	..	.....	111	..	..	..	..	111	110,200	....	....
P. L.	769887	...	...	..	.....	111	..	..	..	..	111	110,200	....	....
												451	438,400	195	1,600
P. L.	853273	...	560	90	2 O. H.	112						112	111,000	....	....
P. R. R.	356938	...	...	..	.....	112						112	110,900	....	....
												224	221,900	99	0,140

Dunnage 1560 Lbs. (260 Lbs. on each car.)

The Rate of Freight from Johnstown, Pa., to.....

If..... Times 1st..... If 1st Class..... If 2d Class..... If Rule 25..... is in cents per 100 Lbs.
 If Rule 26..... If Rule 28..... If 4th Class..... If 5th Class..... If 6th Class.....
 If Special per..... If Special per.....
 If charges are to be prepaid, write or stamp here: To Be Prepaid.....
 Received \$..... to apply in prepayment of the charges on the property described hereon.

(The signature here acknowledges only the amount prepaid.)

Charges Advanced: \$.....

Cambria Steel Company, Shipper.

Per.....

Agent.

Per.....

NOTE.—Printed matter on back omitted by stipulation of Counsel for respective parties.

EXHIBIT 3.

Letters of Cambria Steel Co. and M. A. Hanna Co.

Cambria Steel Company,
Office of Traffic Manager.

Wm. A. Sproull, Traffic Manager, Oliver Building, Pittsburgh,
Pa.

March 5, 1914.

In Reply Refer to File No. —.

Works at Johnstown, Pa.

(Copy.)

Messrs. M. A. Hanna & Company, Cleveland, O.

GENTLEMEN: We have an order from the Great Northern Ry. Company for 3000 tons of Rails, not exceeding 33' in length, which we are obligated to get off on the very first boat that can go through after the opening of navigation. I do not know yet whether we will want to move these Rails from Cleveland or Conneaut, but the probabilities are that on account of the poor facilities at Cleveland as compared with Conneaut, we will have to load from the latter port.

There is a possibility that this order may be increased to 5000 tons, but there is nothing definite in regard to this feature as yet.

Will you please investigate and advise at the earliest possible moment what is the best rate you can secure on this tonnage?

Do you think there is any possibility of our being able to get a boat out prior to, say April 15th?

Yours truly,

WM. A. SPROULL,
Traffic Manager.

W. A. S.—M.

529

(Copy.)

M. A. Hanna Co.

Cleveland, O., March 6, 1914.

Great Northern Rails.

Mr. William A. Sproull, T. M., Cambria Steel Company, Oliver Building, Pittsburgh, Pa.

DEAR SIR: Replying to your favor of the fifth instant relative to 3,000 tons of 33' rails to be floated as soon as boats can get through, beg to advise we can float this tonnage for 80¢.

We have up with the brokers now the question of getting a boat now wintering at Cleveland, although she would not be able to load before April 15th because of hull insurance. It is not likely that boats will be able to get through the Soo before that date.

Trusting that you may be able to secure the business with this freight rate, we beg to remain,

Yours very truly,

M. A. HANNA & CO.,
By C. M. MORRIS.

Cambria Steel Company,
Office of Traffic Manager.

Wm. A. Sproull, Traffic Manager, Oliver Building, Pittsburgh, Pa.

March 9, 1914.

In Reply Refer to File No. —.

Works at Johnstown, Pa.

(Copy.)

M. A. Hanna & Co., Cleveland, O.

GENTLEMEN:

Great Northern Rails.

I am in receipt of your esteemed favor of the 6th by Mr. McMorris, relative to 3000 tons of 33' Rails to be floated to West Superior on the opening of navigation.

530 I note that you will be able to float the 3000 tons in one cargo at 80¢ a ton. In accordance with your advice, we will arrange to have the Rails at Conneaut so that the vessel can begin loading on the 15th of April, if she is ready on that date.

Yours truly,

WM. A. SPROULL,
Traffic Manager.

W. A. S.—M.

(Copy.)

M. A. Hanna & Co.

Cleveland, O., March 10, 1914.

Mr. W. A. Sproull, Traffic Manager, Cambria Steel Company, Pittsburgh, Penna.

DEAR SIR:

Great Northern Rails.

We have your favor of the 9th inst., advising that you will have 3,000 tons of 33 ft. rails at Conneaut for loading in vessel on the 15th of April.

In accordance with this advice, we have today chartered the steamer Benjamin Noble at 80¢ to be at Conneaut on that date. At your

convenience, please advise how you wish bills-of-lading and notices of shipment handled, and oblige,

Yours very truly, M. A. HANNA & CO., *Agents*,
By C. McMORRIS.

531

Cambria Steel Company.

Office of Traffic Manager.

Wm. A. Sproull, Traffic Manager, Oliver Building.

Pittsburgh, Pa.,

March 11, 1914.

In Reply Refer to File No. —.

Works at Johnstown, Pa.

(Copy.)

Messrs. M. A. Hanna & Company, Cleveland, O.

GENTLEMEN: I am in receipt of your favor of the 10th, advising that you have secured the Steamer "Benjamin Noble" to load 3,000 tons of 33' Rails at Conneaut, beginning April 15th, at 80¢ per gross ton.

Future correspondence in reference to details, etc., will be carried on by my Johnstown office.

Yours truly,

WM. A. SPROULL,
Traffic Manager.

W. A. S.—M.

532

EXHIBIT 4.

Letter of M. A. Hanna & Co.

All Correspondence should be addressed to M. A. Hanna & Co.

M. A. Hanna & Co.

Sales Agents for Coal, Coke, Iron Ore and Pig Iron.

D. R. Hanna.

Cleveland, O., April 27, 1914.

R. L. Ireland.

M. Andrews.

H. M. Hanna, Jr.

All quotations, orders and contracts are subject to car supply, strikes, accidents and causes beyond our control.

Mr. J. A. Francombe, Manager, Capitol Transportation Co., Detroit, Mich.

DEAR SIR: We have your favor of the 24th instant confirming charter of the Noble, Conneaut to Duluth, to load May 25th to June first.

We hope that you will be able to take the 50 tons of rails on the next trip of the Noble as we have unloaded them on dock at Conneaut and are very anxious to get them floated.

If you are unsuccessful in getting coal at Oswego for your next trip please take up with us and possibly we can load you for Duluth or Superior.

We have no coal going to Knife River.

Yours very truly,

M. A. HANNA & CO., Agents,
By C. McMORRIS.

C. A. M.-R.

533

EXHIBIT 7.

Statement of Claim.

Statement Showing Manner of Arriving at Insurance as Declared against the Insurance Company of North America, Policy No. 365880, Certificate No. 174544.

Great Northern Railway.

Shipments.		Cars.	Rails.	Weight.	Invoices.
April	8.....	7	777	771,780	\$11,152.22
	9.....	9	999	989,400	14,296.83
	9.....	10	1,110	1,098,900	15,879.10
	10.....	6	666	660,500	9,544.22
	10.....	12	1,332	1,327,700	19,185.27
	11.....	5	555	552,100	7,977.85
	11.....	6	683	661,400	9,485.08
	11.....	5	563	549,300	7,685.30
		<hr/>	<hr/>	<hr/>	<hr/>
		60	6,685	6,611,080	\$95,385.87

840

=2951—

2240

Handling charge from cars to vessel at Conneaut Harbor, Ohioat 35¢ G. T. 1,032.98

96,418.85

Plus 10% 9,641.89

\$106,060.74

As 106,100.00

Less lake freight which we have not paid, as M. A.

Hanna & Co., Agts. of the vessel state no bill will be rendered as rails were not delivered. . . .at 80¢ G. T.

2,361.10

\$103,738.90

Received from C. & B. 5/16/14.

C. S. C.

534

EXHIBIT 8.

Copies of Invoices Covering Cargo (8 Sheets).

(Copy.)

Great Northern Railway Company,
St. Paul, Minn.

Philadelphia, Pa.

Agency Chgo.
File No. 671.

Bought of Cambria Steel Company,

Cambria Works.

Date April 8, 1914.

Shipped from Johnstown, Pa., to Great Northern Railway Company.

Customer's Order 2/24/14.

Mill Order 13980.

Price No. C. G. 433.

Bill No. R-373.

Freight Prepaid to Conneaut Harbor, Ohio.

Route P. R. R. $\frac{c}{2}$ B. & L. E. R. R. at Butler, Pa.

Initials.	Cars.		Sec. No.	Lbs. per yard.	St'd No.	Number of rails of each length 33'	Total.	Weights.	
	Numbers.	Capacity.						Pounds.	Tons. Pounds.
							466		
							470		
							484		
							488		
							498		
							484		
							494		

535

P. L.	799506	...	560	90	1 O. H.	111	111	111	110,200	....
P. L.	793085	...	...	...	...	111	111	111	110,280	....
P. L.	863555	...	...	...	...	111	111	111	110,180	....
P. L.	863481	...	...	...	...	111	111	111	110,080	....
P. R. R.	384881	...	...	...	...	111	111	111	110,400	....
P. R. R.	334872	...	...	...	...	111	111	111	110,200	....
P. R. R.	335912	...	...	...	...	111	111	111	110,440	....
										<hr/>
										777 771,780 344 1,220

Donnage 1,820-Lbs. (260 Lbs. on each car.)

Recapitulation.

Material.

Terms 30 days net.

F. O. B. Superior, Wisc.

Totals	771,780	Tons.	Pounds.	Price.	Amount.
				1,441½	11,152.22

536

(Copy.)

Great Northern Railway Company,
St. Paul, Minn.Agency Chgo.
File No. 671.

Philadelphia, Pa.

Bought of Cambria Steel Company.

Cambria Works.

Date April 9, 1914.

Shipped from Johnstown, Pa., to Great Northern Railway Company.

Alongside Dock, Superior, Wis.

"S. S. Benjamin Noble," Conneaut Harbor, Ohio.

Customer's Order 2/24 14.

Mill Order 13980.

Price No. C. G. 433.

Bill No. R-376.

Route P. R. R. & L. E. R. R. at Butler, Pa.
Freight Prepaid to Conneaut Harbor, Ohio.

Great Northern Railway Company,
St. Paul, Minn.

Philadelphia, Pa.

Agency Chgo.
File No. 671.

Bought of Cambria Steel Company,

Cambria Works.

Date April 9, 1914.

Shipped from Johnstown, Pa., to Great Northern Railway Company.

Alongside Dock, Superior, Wis.

% S. S. "Benjamin Noble," Conneaut Harbor, O.

Route P. R. R. % B. & L. E. R. R. at Butler, Pa.

Customer's Order 2/24/14.

Mill Order 13980.

Price No. C. G. 433.

Bill No. R-379.

Freight Prepaid to Conneaut Harbor, Ohio.

Initials.	Cars.		Sec. No.	Lbs. per yard.	Std No.	Number of rails of each length 33'	Weights.	
	Numbers.	Capacity.					Pounds.	Tons. Pounds.
						Total.		
							499	
							489	
							502	
							492	
							486	
							494	
							497	
							475	
							487	
							499	

Cars.			Sec. No.	Lbs. per yard.	Std No.	Number of rails of each length	Total.	Weights.	
Initials.	Numbers.	Capacity.						Pounds.	Tons.
P. L.	858956	...	560	90	1 O. H.	111	111	109,900	...
P. L.	852767	...	...	...	...	111	111	110,000	...
P. L.	853065	...	...	...	...	111	111	109,900	...
P. L.	852518	...	...	...	...	111	111	110,000	...
P. R.	334596	...	...	...	...	111	111	109,800	...
"	384360	...	...	...	...	111	111	109,700	...
"	356651	...	...	...	...	111	111	109,800	...
"	368264	...	...	...	...	111	111	109,900	...
"	368081	...	...	...	...	111	111	110,000	...
"	334761	...	...	...	...	111	111	109,900	...
							1,110	1,098,900	490 1,300

Dunnage 2,600 Lbs. (260 Lbs. on each car.)

Recapitulation.

Material.		Pounds.	Tons.	Pounds.	Price.	Amount.
Terms 30 days net.	F. O. B. Superior, Wisc.					
Totals.....	1,098,900	.....	.....	1.44 1/2	15,879.10

540

(Copy.)

Great Northern Railway Company,
St. Paul, Minn.

Agency Chgo.
File No. 671.

Philadelphia, Pa.

Bought of Cambria Steel Company,

Cambria Works.

Date April 10, 1914.

Shipped from Johnstown, Pa., to Great Northern Railway Company,

Alongside Dock, Superior, Wis.

% S. S. "Benjamin Noble," Conneaut Harbor, Ohio.

Customer's Order 2/24/14.

Mill Order 13980.

Price No. C. G. 433.

Bill No. R-380.

Route P. R. R. % B. & L. E. R. R. at Butler, Pa.

Freight Prepaid to Conneaut Harbor, O.

Initials.	Cars.		Sec. No.	Tons. per yard.	St'd No.	Number of rails of each length	Weights.		
	Numbers.	Capacity.					Pounds.	Tons.	Pounds.
						Total.			
						492			
						507			
						485			
						487			
						487			
						493			

Initials.	Cars.		Sec. No.	Tons. per yard.	St'd No.	Number of rails of each length	Weights.		
	Numbers.	Capacity.					Pounds.	Tons.	Pounds.
						Total.			
						492			
						507			
						485			
						487			
						487			
						493			

541

Initials.	Cars.		Sec. No.	Lbs. per yard.	Std No.	Number of rails of each length	Total.	Weights.	
	Numbers.	Capacity.						Pounds.	Tons. Pounds.
P. R. R. . . .	356093	...	560	90	1 O. H.	111	111	109,800	.....
"	368037	...	...	..	.....	111	111	110,100	.....
"	336612	...	...	..	.....	111	111	110,300	.....
P. L.	852724	...	...	..	.....	111	111	110,000	.....
"	859289	...	...	..	.....	111	111	110,100	.....
"	807322	...	...	..	.....	111	111	110,200	.....
							666	660,500	294 1,940

Dunnage 1,560 Lbs. (260 Lbs. on each car.)

Recapitulation.

Material.		Pounds.	Tons.	Pounds.	Price.	Amount.
Terms 30 days net.	F. O. B. Superior, Wis.					
Totals.....	660,500	.....	.....	1.44 1/2	9,544.22

Great Northern Railway Company,
St. Paul, Minn.

(Copy.)

Agency Chgo.
File No. 671.

Philadelphia, Pa.

Bought of Cambria Steel Company,

Cambria Works.

Date April 10, 1914.

Shipped from Johnstown, Pa., to Great Northern Railway Company,
Alongside Dock, Superior, Wis.
% S. S. "Benjamin Noble," Conneaut Harbor, Ohio.

Customer's Order 2/24/14.
Mill Order 13980.
Price No. C. G. 433.
Bill No. R-384.

Route P. R. R. % B. & L. E. R. R. at Butler, Pa.

Freight Prepaid to Conneaut Harbor, O.

Initials.	Cars.		Sec. No.	Lbs. per yard.	St'd No.	Number of rails of each length 33'	Total.	Weights.	
	Numbers.	Capacity.						Pounds.	Tons. Pounds.
							472		
							490		
							487		
							475		
							500		
							490		
							490		
							487		
							490		
							495		
							476		

Cars.			Sec. No.	Lbs. per yard.	Std No.	Number of rails of each length 33'	Total.	Weights.	
Initials.	Numbers.	Capacity.						Pounds.	Tons.
P. L.	822898	...	560	90	1 O. H.	111	111	110,700	...
P. L.	807211	...	...	...	...	111	111	110,500	...
P. R.	334471	...	...	...	...	111	111	110,600	...
"	367912	...	...	...	...	111	111	110,700	...
"	337611	...	...	...	...	111	111	110,500	...
P. L.	858442	...	...	...	...	111	111	110,500	...
P. R.	336349	...	...	...	...	111	111	110,800	...
P. L.	859682	...	...	...	...	111	111	110,700	...
P. L.	859664	...	...	...	...	111	111	110,800	...
P. L.	858192	...	...	...	...	111	111	110,600	...
P. L.	852579	...	...	...	...	111	111	110,700	...
P. R.	337618	...	...	...	...	111	111	110,600	...
								1,332	1,327.700
								592	1,620

Dunnage 3,120 Lbs. (260 Lbs. on each car.)

Recapitulation.

Material.

Terms 30 days net.

F. O. B. Superior, Wis.

Totals	Pounds.	Tons.	Pounds.	\$ Price per cwt.	Amount.
	1,327,700	...	...	1.41 1/2	19,185.25

545	Cars.			Sec. No.	Lbs. per yard.	Std. No.	Number of rails of each length 27	Total.	Weights.	
	Initials.	Numbers.	Capacity.						Pounds.	Tons.
	P. L.	807226	...	560	90	1 O. H.	111	111	110,400	.....
	P. L.	859732	...	...	..	.....	111	111	110,500	.....
	P. L.	858448	...	...	..	.....	111	111	110,300	.....
	P. R. R. ...	355579	...	...	..	.....	111	111	110,500	.....
	P. R. R. ...	336031	...	...	..	.....	111	111	110,400	.....
								555	552,100	246 1,060

Dunnage 1,300 Lbs. (260 Lbs. on each car.)

Recapitulation.

Material.	Pounds.	Tons.	Pounds.	\$ Price per cwt.	Amount.
Terms 30 days net.					
F. O. B. Superior, Wis.					
Totals	552,100	.....	.....	1.41½	7,977.85

547

Cars.			Sec. No.	Lbs. per yard.	Std No.	Number of rails of each length							Weights.	
Initials.	Numbers.	Capacity.				33'	32'	31'	30'	29'	28'	25'	Pounds.	Tons.
P. R. R.	356942	...	560	90	1 O. H.	...	63	31	16	9	1	120	110,300	...
"	356061	...	...	...	...	...	74	25	10	9	...	118	109,800	...
"	356389	...	...	...	...	111	...	...	...	...	...	111	110,300	...
"	356666	...	...	...	...	111	...	...	...	...	...	111	109,800	...
"	383948	...	...	...	...	111	...	...	...	...	...	111	110,200	...
P. L.	858428	...	560	90	2 O. H.	112						571	550,400	245 1,600
												112	11,100	49 1,240

Dunnage 1,560 Lbs. (260 Lbs. to each car.)

Recapitulation.

Material.		Recapitulation.		Amount.	
Terms 30 days net.		Pounds.	Tons.	Pounds.	
# 1 Rails		550,400	...	...	7,953.28
# 2 Rails		111,000	...	...	1,531.80
F. O. B. Superior, Wisc.					
Totals.....					9,485.08

548

32—600

(Copy.)

Great Northern Railway Company,
St. Paul, Minn.

Agency Chgo.
File No. 671.

Philadelphia, Pa.

Bought of Cambria Steel Company,

Cambria Works.

Date April 11, 1914.

Shipped from Johnstown, Pa., to Great Northern Railway Company,
Alongside Dock, Superior, Wis.
% S. S. "Benjamin Noble," Conneaut Harbor, O.

Customer's Order 2/24/14.

Mill Order 13980.

Price No. C. G. 433.

Bill No. R-387.

Freight Prepaid to Conneaut Harbor, O.

Route P. R. R. % B. & L. E. R. R. at Butler, Pa.

Initials.	Cars.		Sec. No.	Lbs. per yard.	Std No.	Number of rails of each length				Total.	Weights.	
	Numbers.	Capacity.				33'	32'	31'	28' 26'		Pounds.	Tons. Pounds.
										482		
										470		
										493		
										493		
										482		
										471		

549	Cars.			Size. No.	Lbs. per yard.	Std. No.	Number of rails of each length						Weights.	
	Initials.	Numbers.	Capacity.				33'	32'	31'	30'	29'	28'	Pounds.	Tons.
	P. R. R. . . .	334807	...	560	90	1 O. H.	...	70	33	9	17		108,600	...
	"	337542	...	...	..	.....	111	..	..	..	..		109,400	...
	"	335803	...	...	..	.....	111	..	..	..	..		110,200	...
	P. L.	769887	...	...	..	.....	111	..	..	..	..		110,200	...
							Price.							
													438,400	195 1,600
	P. R. R. . . .	359338	...	560	90	2 O. H.	112					1.38	110,900	49 1,140

Dunnage 1,300 Lbs. (260 Lbs. on each Car.)

Recapitulation.

Material.	Pounds.	Tons.	Pounds.	\$ Per cwt. price.	Amount.
Terms 30 days net.					
#1 Rails	438,400	1.44½	6,334.88
#2 Rails	110,900	1.38	1,530.42
F. O. B. Superior, Wisc.					
Totals					7,865.30

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EXHIBIT 9.

Letter June 3, 1914, N. A. to C. & B.

June 3, 1914.

Messrs. Curtin & Brockie, 4th & Walnut Streets, Philadelphia, Pa.

DEAR SIR:

Cambria Steel Company.

This afternoon we received your check No. 25768, on the Franklin National Bank, for \$143.24, which applies to premium on cargo declared per S/S "Benjamin Noble," viz. \$159.15, less 10% brokerage or \$143.24.

As there is some possible question of our liability for this risk, the exact outcome of which cannot be determined at the present time, we cannot accept this premium except with the distinct understanding and agreement that such acceptance of these funds is wholly without prejudice to our rights and is not to be deemed an admission of liability. If you and the Cambria Steel Company are willing, to have us accept these funds, subject to the above understanding and agreement, we will do so, but in the meantime we are returning the check herewith.

Awaiting your further advices, we remain,

Yours very truly,

Encl.

EXHIBIT 10.

Letter June 4, 1914, C. & B. to N. A.

Curtin & Brockie, Insurance,

S. E. Cor. 4th & Walnut Sts.

Correspondents:

Johnson & Higgins, Average Adjusters & Insurance Brokers, New York.

Willis Faber & Co., Ltd., London.

Philadelphia, June 4th, 1914.

Insurance Company of North America, Philadelphia, Pa.

DEAR SIR:

Cambria Steel Company.

We acknowledge receipt of your letter of June 3rd returning our check for \$143.24, being premium on cargo as declared per S. S. "Benjamin Noble." If the matter concerned only ourselves, we should have no hesitancy in assenting to your ac-

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ceptance of the premium without prejudice as suggested in your letter, but in view of the notice to the Cambria Steel Company, conveyed in your letter, we think it advisable to communicate to them and submit the substance of your letter for their consideration. We will advise you further as soon as we hear from them and will hold the check pending their instructions.

Yours very truly,

CURTIN & BROCKIE.

W. W. CURTIN, *President*.

W. W. C./M.

EXHIBIT 11.

Letter June 8, 1914, C. & B. to N. A.

Curtin & Brockie, Insurance,

S. E. Cor. 4th & Walnut Sts.

Philadelphia, June 8th, 1914.

Insurance Company of North America, Philadelphia, Pa.

DEAR SIR:

Cambria Steel Company—"Benjamin Noble."

Referring to your letter of the 3rd inst. we have conferred with our assured on the subject and they agreed with the views as contained in ours to you of the 4th, having no hesitancy in assenting to your acceptance of the premium without prejudice as suggested in your letter. We are enclosing check herewith.

Yours very truly,

CURTIN & BROCKIE.

W. W. ROBERTSON, *Director*.

M.

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EXHIBIT 12.

Letter June 17, 1914, N. A. to Cambria Steel Co.

Insurance Company of North America,

232 Walnut St.

Philadelphia, June 17, 1914.

Cambria Steel Company, Morris Building, Philadelphia.

GENTLEMEN:

S. S. "Benjamin Noble."

Referring to your claim under policy No. 365,880, Certificate No. 174,544, issued by this Company for loss of a cargo of steel rails

while on board the above steamer, which it is claimed foundered in Lake Superior on or about April 28, 1914, we beg to say that from information, which this Company has, it appears that this vessel foundered because of unseaworthiness due to overloading. Under these facts, this Company must decline to recognize any liability under its policy and certificate mentioned. In order, however, that your Company may not be inconvenienced, pending the recovery of the loss from the carrier or other parties liable, we will agree to advance you as a loan, without interest, under the Borrowed and Received Receipt which we have submitted to you, such a sum as you would have been entitled to receive if the insurance had covered, with the understanding that you shall forthwith take through such counsel as we may designate whatever legal proceedings are necessary and proper to recover the loss. If this is agreeable to you, please confirm the understanding by letter promptly, upon receipt of which we will immediately arrange for the advancement.

Yours very truly,

INSURANCE COMPANY OF NORTH AMERICA.
G. E. MORRIS.

L.

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EXHIBIT 13.

Letter June 19, 1914, Cambria Steel Co. to N. A.

Cambria Steel Company,

Law Department.

Johnstown, Pa., 19th June, 1914.

The Insurance Company of North America, 232 Walnut Street,
Philadelphia, Pennsylvania.

GENTLEMEN: Replying to your communication of the seventeenth instant concerning Cambria Steel Company's claim under insurance policy No. 365,880, certificate No. 174,554, issued by your company, would state that Cambria Steel Company denies your right to decline payment of said policy and certificate of insurance, but will for the present accept a loan of one hundred three thousand, seven hundred thirty-eight dollars and ninety cents (\$103,738.90) on the terms and conditions set forth in your Borrowed and Received Receipt; it being understood that the acceptance under the same shall in no way be construed as a waiver by Cambria Steel Company of any of its rights under said policy and certificate of insurance, and whatever costs and expenses are involved in the litigation proposed we shall expect you to reimburse Cambria therefor.

Yours truly,

J. C. DAVIES,
Assistant Solicitor.

EXHIBIT 14.

Letter, Borrow & Loan Receipt.

Philadelphia, June 19th, 1914.

Borrowed and Received from the Insurance Company of North America, the sum of One Hundred and Three Thousand Seven Hundred Thirty-eight and 90/100 Dollars, being a loan, without interest, pending the ascertainment whether the loss of Twenty-nine hundred fifty-one and 840/2240 tons steel rails shipped by Cambria Steel Company, at Conneaut Harbor, Ohio, on or about

April 18th, 1914, and consigned to Great Northern Railway Co., & / or Cambria Steel Co. at Superior, Wisconsin, and lost, burned or destroyed, with the S. S. "Benjamin Noble" near Knife Island on Lake Superior on or about April 28th, 1914, is a loss for which the Carrier or any other person or persons is or are responsible; and, in the event of recovery therefor from the carrier or any other person or persons, we hereby obligate ourselves to refund this loan to the said Insurance Company of North America, at the same time as and in the same proportion that said recovery shall be made.

CAMBRIA STEEL CO.
WM. A. SPROULL.

\$103,738.90.

Check to the order of Cambria Steel Co.

EXHIBIT 15.

Affidavit of Francombe.

Marine Protest—Extended.

UNITED STATES OF AMERICA,
State of Michigan,
County of Wayne,
City of Detroit, ss:

To all People to whom these Presents shall Come or may Concern:

I, Wm. W. Sumner a Public Notary, in and for the County of Wayne, in the State aforesaid, by letters patent, under the Great Seal of the said State, duly commissioned and sworn, dwelling in the City of Detroit, send Greeting:

Know Ye, That on the 21st day of May in the year of our Lord one thousand nine hundred and fourteen, before me, the said Notary, appeared John A. Francombe, General Manager of the vessel called the Str. Benj. Noble of Detroit burden 1481 gr. tons, and noted in due form of law with me, the said Notary, his Protest, for the use and purposes hereinafter mentioned; and now at this

day, to wit: the day of the date hereof, before me, the said Notary, at the City of Detroit aforesaid, again comes the said..... Master, and requires me to extend his protest, and, together with the said Master, also comes.....Mate, and

555 belonging to the aforesaid vessel, all of whom being by me duly sworn, voluntarily, freely and solemnly do declare and depose as follows, that is to say: That on the 18th day of April, 1914, at about 5 o'clock P. M., the said vessel left the port of Conneaut, O., bound thence to the port of Duluth in the State of Minn. laden with about 2950 tons of steel rail; that the said vessel was then stout, staunch and strong; had her cargo well and sufficiently stowed and secured; was well masted, manned, tackled, victualled, apparelled and appointed, and was in every respect fit for sea, and the voyage she was about to undertake:

The steamer Benj. Noble left Conneaut, O., April 18th, 1914, about 5 P. M. laden with about 2950 tons of steel rail, bound for Duluth, Minn.

That while on Lake Superior and in vicinity of Knife Island, on account of gale from northeast, wind blowing about 70 miles an hour, the steamer floundered and was a total loss with cargo and all the crew, about 3:30 A. M. April 28th, 1914.

And the said Master further says, that as all the damage and injury which already has or may hereafter appear to have happened or occurred to the said vessel or her said cargo, has been occasioned solely by the circumstances hereinbefore stated, and cannot, nor ought to be attributed to any insufficiency of the said vessel or default of him, this deponent, his officers or crew, he now requires of me, the said Notary, to make this protest and this public act thereof, that the same may serve and be of full force and value, as of right shall appertain. And thereupon the said Master doth protest, and I, the said Notary at his special instance and request do, by these presents, publicly and solemnly protest against winds, weather and seas,.....and against all and every accident, matter and thing, had and met with as aforesaid, whereby, or by means whereof the said vessel, or her cargo, already has or hereafter shall appear to have suffered or sustained damage or injury, for all losses, costs, charges, expenses, damages and injury, which the said Master or the owner or owners of the said vessel, or the owners, freighters or shippers of her said cargo, or any other person or persons interested or concerned in either, already have or may hereafter pay, sustain, incur, or be put into, by or on account of the premises, or for which the insurer or insurers of the said vessel or her cargo, is or are respectively liable to pay or make contribution, or average according to custom, or their respective contracts or obligations; and

556 that no part of such losses and expenses already incurred, or hereafter to be incurred, do fall on him, the said Master, his officers or crew.

This done and Protested, In the City of Detroit this 21st day of May, A. D. 1914.

JOHN A. FRANCOMBE,

General Manager.

In Witness Whereof, As well the said appears as I, the said Notary, have hereunto subscribed these presents, and I, the said Notary, have hereunto attached my notarial seal, the day and year last aforesaid.

[SEAL.]

WM. W. SUMNER,
Notary Public.

STATE OF MICHIGAN,
County of Wayne,
City of Detroit, ss.

I, Wm. W. Sumner, a Notary Public, in and for said County, in the State aforesaid, do hereby certify that the foregoing contains a true and correct copy of the original protest entered on record before me, by John A. Francombe, Gen. Mgr. of the Str. Benj. Noble, said protest having been noted on the 21st day of May, 1914, and extended before me on the 21st day of May, 1914.

In Witness Whereof, I have hereunto set my hand and seal notarial this 25th day of May, 1914.

[SEAL.]

WM. W. SUMNER,
Notary Public.

My commission expires Jan. 23, 1916.

(Here follows photograph marked p. 556a.)

556a

EXHIBIT 16.

Small Photograph of Steamer "Noble."





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EXHIBIT 21.

Certified Copy of Enrollment.

Cat. No. 1273.

Rebuilt at in 1.... Measured at Detroit, Mich., 1909; remeasured at, 1....
 Approximate number of crew, 16.

Permanent.

Certificate No. 59.

Official No. 206210.

The United States of America,
 Department of Commerce and Labor.

Bureau of Navigation.

Certificate of Enrollment.

[Northern, Northeastern, and Northwestern Frontiers of the United States.]

(Section 4319, Revised Statutes.)

In Conformity to Title L, "Regulation of Vessels in Domestic Commerce," of the Revised Statutes of the United States.

¹Benjamin Noble, of Detroit, Mich., having taken and subscribed the oath².....required by law, and having sworn³.....that he is a citizen of the United States and President of the Capitol Transportation Company, a corporation organized under the laws of the State of Michigan; and that the said Company is the ⁴sole owner of the vessel called the Benj. Noble of....., whereof Geo. J. Souer, a citizen of the United States, is master, and that the said vessel was built in the year 1909, at Wyandotte, Mich., of⁵ steel, as appears by⁷ the Master Carpenters' Certificate of the Detroit Shipbuilding Company, of Detroit, Mich., by E. Ketcham, Secretary, on file in this office and⁸ T. H. Keane, Dep. Coll. of Customs, at Detroit, Mich., having certified that the said vessel is a steam screw; that she has one deck, two masts, a plain head, and a round stern; that her register length is 239 2/10 feet, her register breadth 42 2/10 feet, her register depth 18 8/10 feet, her height...../10 feet; that she measures as follows:

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	Tons.	100ths.
Capacity under tonnage deck.....	1364	50
Capacity between decks above tonnage deck.....
Capacity of inclosures on the upper deck, viz:.....	117	45
Gross Tonnage	1481	—

Deductions under Section 4153, Revised Statutes, as amended by Act of March 2, 1895:

Crew space, 84.68; Master's cabin, 13.13; Steering gear,.....; Anchor gear, 22.20; Boatswain's stores,.....; Chart house,.....; Donkey engine and boiler,.....; storage of sails,.....; Propelling power, 474.25;		
Total Deductions	594	26
Net Tonnage	887	

The following-described spaces, and no others, have been omitted, viz: and the said^a having agreed to the description and measurement above specified, said Vessel has been duly Enrolled at this Port.

Given under my hand and seal at the Port of Detroit, in the District of Detroit, this 20th day of May in the year one thousand nine hundred and nine.

A. SMITH,

Spl. Dep. Collector of Customs.

.....
Naval Officer.

¹Insert name and address of person by whom oath or affirmation was made.

²Substitute "affirmation" when necessary.

³Substitute "affirmed" when necessary.

⁴If there is only one owner, write "he" or "she"; if more than one owner, write "he (or she) owning" and the part owned, "together with" followed by the names of other owners, their shares and addresses.

⁵If incorporated company is sole owner, strike out words "citizen... of the United States, and."

⁶Write "wood," "iron," "steel," or as required.

⁷Cite surrendered marine document or write "certificate of..... builder..." if first document of a new vessel.

559 ⁸Write "said register," "said enrollment," or "said license." In the first document of a new vessel, give the name and title of the measurer.

⁹In the first document of a new vessel, give the name of the person counter-signing certificate of measurement. Written in red across face:

Port of Detroit, Mich., May 19, 1914.

I hereby certify that this is a true copy of the original as appears by the records of this office.

[SEAL.]

T. H. KEANE,

Dep. Coll. of Customs.

Indorsements.

Cat. No. 1273. Department of Commerce and Labor, Bureau of Navigation. Permanent.

Certificate of Enrollment No. 59 of the St. S. called the Benj. Noble of Detroit. 1481 gross tons, 887 net tons, issued at Port of Detroit May 20, 1909.

Where Surrendered:..... When Surrendered:....., 19.... Why Surrendered:.....
 Collector of Customs.

EXHIBIT 22.

*Wind Report for 27th and 28th (Libellant's), 3 Letter Sheets and
 2 Weather Report Sheets.*

Address correspondence to Chief of U. S. Weather Bureau.

U. S. Department of Agriculture,
 Central Office of the Weather Bureau.

Washington, D. C., Sep. 19, 1914.

SIR: Please find inclosed herewith certain meteorological data, extracted from the records of the Weather Bureau, thus complying with your recent request as far as the available records will permit.

Very respectfully,

C. F. MARVIN,
Chief of Bureau.

Stamped: Received Sep. 21, 1914. Ans'd

560 Address correspondence to Chief of U. S. Weather Bureau.
 W. M.

U. S. Department of Agriculture,
 Central Office of the Weather Bureau,
 Climatological Division,
 Washington, D. C.

*Extract from Monthly Meteorological Notes at Duluth, Minn., for
 the Month of April, 1914.*

"The most severe storm in nine years began with increasing northeast winds and rain at 4:00 p. m. on the 27th, becoming a moderate gale late that night, and developing into a strong gale at 5:00 a. m., the 28th, and continued a strong gale during the whole day. The rain turned to sleet at 10:00 a. m. of the 28th, continuing until 7:10 p. m., when sleet and rain mixed began, which changed to snow at 8:45 p. m. The snow continued after midnight of the 28th, and did not end until 4:48 p. m. on the 29th. The rain froze on all exposed objects and formed a heavy coating of ice, which did not melt until the morning of the 30th."

"An extraordinarily heavy sea was running all day of the 28th, and the level of the water in the harbor was two feet higher than

normal. The steamer Lambert, loaded with grain, which had left port at midnight of the 27th, returned early in the morning of the 28th."

"Silvo Sanden attempted to walk to the end of the Duluth Entry pier as the result of a wager, and was swept away by the waves and drowned. This occurred at 10:00 a. m. on the 28th."

"Early in the morning of the 28th the high winds blew down two bridges at the Clarkson Coal Docks, and part of the structure of one fell across the steamer Champlain damaging her to some extent. The bridges were each 600 feet long, and the total damage is estimated at \$100,000."

"Wreck:

"Wreckage was found along the shore of Minnesota Point on the morning of the 29th. It was identified as coming from the steamer Noble, reported as inbound, carrying a cargo of steel rails. From the state of the wreckage it is assumed that she foundered not very far from shore. There was a crew of twenty men, and up to the night of May 6th, no bodies have been recovered. So far as known this was the only vessel lost during the storm."

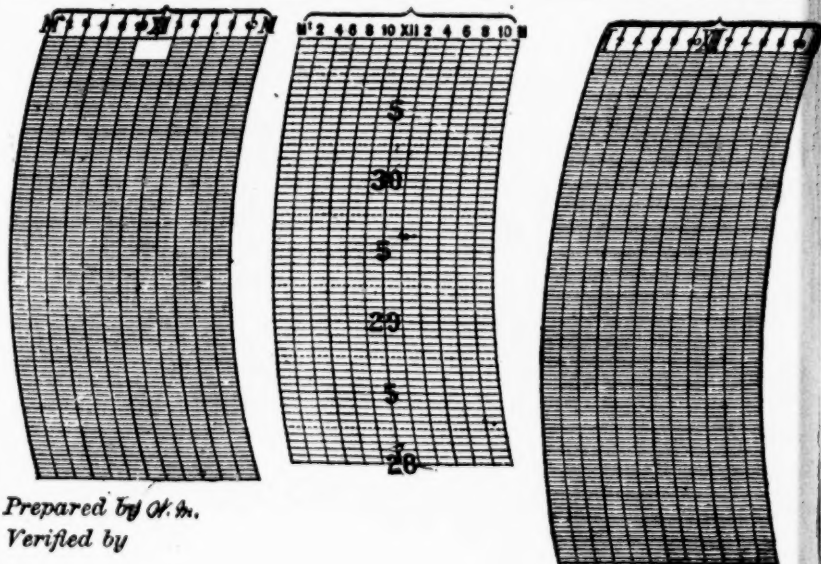
(Here follow diagrams marked pp. 561 and 563.)

Exhibit No. 27

U. S. DEPARTMENT OF AGRICULTURE
DAILY LOCAL

(Station) Duluth, Minn., (Day of week) _____

Time (local standard), _____ mer.	A. M.															
	12-1	1-2	2-3	3-4	4-5	5-6	6-7	7-8	8-9	9-10	10-11	11-12	12-1	1-2	2-3	3-4
Temperature at end of hour _____																
State of weather: Nature of precipitation and time of beginning and ending Amount of precipitation Cloudiness and other conditions.																
Bearings: Time, Character, <u>Cloudy</u>																
Sunshine (in tenths of hours)																
Wind direction	NE	NE	NE	NE	NE	NE	NE	NE	NE	NE	NE	NE	NE	NE	NE	NE
Wind movement	12	13	14	13	14	14	13	12	13	17	17	16	18	19	23	23
Maximum velocity (exceeding _____ m.p.h.) direction and time																
	Total duration.		Total amount of precipitation.	Excessive rate.		Amount taken account of in gals.	Accumulated depths during day.									
	From—	To—		Began—	Ended—		5 min.	10 min.	15 min.	30 min.	45 min.	60 min.				
Excessive precipitation, accumulated amounts																



Prepared by A. M.
Verified by _____

2.

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CLIMATE, WEATHER BUREAU RECORD.

(Date) April 27, 1914

P. M.									 hours slower than 75th meridian time.			
4-5	5-6	6-7	7-8	8-9	9-10	10-11	11-12	Maximum.	Minimum.	Mean.	Normal.		
R.	R.	R.	R.	R.	R.	R.	R.	52	35	42	49		
Total depth of snow for 24 hours ending 7 p. m., 0 inches.													
Snow on ground 7 p. m., 0 inches.													
Total snowfall, midnight to midnight, inches.													
Precipitation to 7 p. m., 0 in.; to 7 p. m., 0.01 in.													
Total precipitation, midnight to midnight, 0.21 inches.													
Character of day, Cloudy Moon phase,													
Average daily cloudiness (0-10) 7													
Actual sunshine, hours,													
Possible sunshine, hours,													
Percentage of possible sunshine,													
Prevailing direction, NE													
Total movement, 476													
Average hourly velocity, 19.8													
Maximum velocity, 42 Direction, NE Time, 8:35 p. m. Relative humidity, a. m. 8:35 p. m. Reduced barometric, a. m. p. m. River gauge,													

NOTES.

light fog began 1:30 p. m.; ended 4:00 p. m.
 Dense fog began 4:00 p. m.; ended 8:00 p. m.
 light fog began 8:00 p. m.; ended during night p. m.

R = rain. S1 = sleet. S = snow. B = began. E = ended. T = trace.

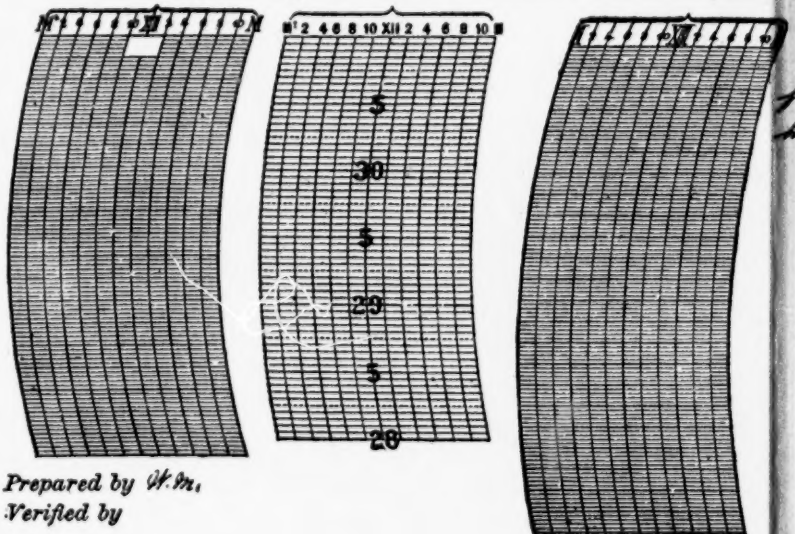
No. 600
 Capital Manufacturing Co. } \$561.
 - 85 -
 Cambria Steel Co }

U. S. DEPARTMENT OF AGRICULTURE

DAILY LOCAL FORM

(Station) Duluth, Minn., (Day of week) _____

Time (local standard), <u>7A</u> mer.		A. M.																			
		12-1	1-2	2-3	3-4	4-5	5-6	6-7	7-8	8-9	9-10	10-11	11-12	12-1	1-2	2-3	3-4				
Temperature at end of hour		N.	N.	N.	E.	N.	E.	N.	N.	E.	N.E.	S.E.	S.E.	S.E.	S.E.	S.E.	S.E.				
State of weather:	Nature of precipitation and time of beginning and ending																				
	Amount of precipitation	2.0	1.6	1.8	1.9	1.9	2.2	1.3	1.7	1.6	1.8	1.7	1.7	1.7	1.7	1.7	1.7				
	Cloudiness and other conditions																				
Sunshine (in tenths of hours)		Sunrise: Time: _____ Character: <u>Cloudy</u>																			
Wind direction		NE	NE	NE	NE	NE	NE	NE	NE	NE	NE	NE	NE	NE	NE	NE	NE				
Wind movement		34	29	34	33	38	40	46	41	40	40	40	40	41	41	41	37				
Maximum velocity (exceeding _____ miles) direction and time		32	42	36	42	48	51	48										45	45	47	48
Excessive precipitation, accumulated amounts		Total duration.		Total amount of precipitation of time.	Excessive rate.		Amount of excessive precipitation.	Accumulated depths during excessive precipitation.													
		From—	To—		Excess—	Noted—		5 min.	10 min.	15 min.	20 min.	25 min.	30 min.								



Prepared by H.M.
 Verified by _____

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EXHIBIT 23.

Temporary Certificate.

(Copy.)

File No. V-598.

United States of America,

Department of Commerce,

Steamboat-Inspection Service.

Temporary Certificate of Inspection.

(Section 4421, Revised Statutes.)

Name of Vessel: Benj. Noble.

The undersigned, Local Inspectors for the District of Detroit in the State of Michigan, hereby certify that the Freight Steam vessel, named Benj. Noble of 1481 gross tons, of Detroit, in the State of Michigan, whereof Capitol Transportation Company is owner and John Eisenhardt is master, was regularly inspected on the 22nd day of April, 1914, by inspectors of the Steamboat-Inspection Service, and found to conform in all things to the requirements of the laws governing the Steamboat-Inspection Service and the Rules and Regulations Prescribed by the Board of Supervising Inspectors.

This Temporary Certificate of Inspection is issued under the provisions of Section 4421, Revised Statutes of the United States, as amended by an act of Congress approved June 11, 1906, in lieu of the regular certificate of inspection, and shall be in force only until the receipt on board said vessel of the certified copies of the original certificate of inspection filed with the Chief Officer of Customs at Detroit, Michigan, this certificate in no case to be valid after one year from the date of inspection.

The said vessel is permitted to navigate the waters of the Great Lakes between.....and....., a distance of about miles, and to touch at intermediate ports.

This temporary certificate must be framed under glass; and, during the period of its validity, must be conspicuously placed on the vessel where it will be most likely to be observed by passengers and others.

Persons Allowed To Be Carried.

	Officers and crew.....	15
566	Passengers (regular) .....	..
	Passengers (excursion) .....	..
	Total number allowed	15

FRED. J. MENO,
Inspector of Hulls.
GEORGE M. MILNE,
Inspector of Boilers.

This form of Certificate of Inspection was adopted by the Board of Supervising Inspectors, Steamboat-Inspection Service, on February 7, 1911, and approved by the Secretary of Commerce on March 8, 1911.

EXHIBIT 24.

Permanent Certificate.

(Copy.)

File No. V-598.

This Certificate Expires April 22, 1915.

United States of America,

Department of Commerce,

Steamboat-Inspection Service.

Certificate of Inspection for Steam or Motor Vessel.

STATE OF MICHIGAN.

District of Detroit:

Freight Vessel *Benj. Noble*.

Application in writing having been made to the undersigned, Inspectors for this District, to inspect the above-named vessel propelled by Steam, of Detroit, in the State of Michigan, whereof Capitol Transportation Company is owner, and John Eisenhardt is Master, said inspectors, having completed the inspection of the vessel on the 22nd day of April, 1914, Do Certify that the said vessel was built at Wyandotte, in the State of Michigan, in the year 1909; rebuilt in the year 1...; that the Hull is constructed of Steel; and, as shown by official records, is of 1481 gross tons; that the said vessel has
staterooms andBerths, and is allowed to carry
 567passengers, viz:First-cabin,Second-cabin,
 andDeck or Steerage Passengers; also is required to carry a full complement of officers and crew, consisting oflicensed Master, 1 licensed Master and Pilots, 2 licensed pilots,licensed Mate, 2 Quarter-masters,Seamen, 3 Deck Hands, 1 licensed Chief Engineer, 1 licensed Assistant Engineer,licensed Junior Engineer,Water Tender, 1 Oiler, 2 Firemen,Coal Passer,Wiper, 2 Watchmen, and also 2 persons when needed in Steward's and other departments not connected with the navigation of the vessel; that the said vessel is provided with One triple expansion Condensing Engine of 17, 27½ and 46 inches diameters of cylinders and 3 feet stroke of piston, and 2 Boilers, 12½ feet in length and 138 inches in diameter,

made of lawful Steel, in the year 1909, rebuilt in the year 1.... The said vessel is permitted to navigate, for one year, the waters of the Great Lakes, between....., and touching at intermediate ports, a distance of about.....miles and return.

We Further Certify that the said vessel at the date hereof is, in all things, in conformity with the laws governing the Steamboat-Inspection Service and the Rules and Regulations of the Board of Supervising Inspectors.

The following particulars of inspection are enumerated, namely:

Anchors, No. 2; Cables, No. 2; Compasses, No. 2; Has signal lights, Yes; Metal lifeboats No. 2; Wooden lifeboats, No. ...; Working boat, No. ...; Collapsible lifeboats, No. ...; Every lifeboat has equipment in accordance with the rules, Yes; Life rafts, No. 1; Life preservers, No. 20; Auxiliary life-saving appliances, No. and kind,; Has line-carrying projectiles, and means of propelling them,; Fire extinguishers, No. 2; Portable hand fire pumps, No. ...; Double-acting hand fire pumps, No. 1; Hose—Internal diameter of, inches, $1\frac{1}{2}$; Length of, feet, 200; Fire buckets, No. 25; Water barrels, No. —; Water tanks, No. 1; Axes, No. 8.

Main Boilers.

Boiler plate: Thickness of 1.055", Tensile strength of 60000 lbs., Record in local inspectors' office at Detroit, Mich.; Boiler shell.... drilled...., 1....; Thickness of plate found,/100 inch; Longitudinal seams, Triple riveted; Holes, Drilled; Maximum steam pressure allowed, 180 lbs.; Hydrostatic pressure applied, 270 lbs.; Steam pipe: Material, Steel; Diameter, Main, $7\frac{3}{4}$ "; Thickness, .375"; Feed pumps for boilers, No. 3; Steam fire pumps, double-acting, No. 1.

Donkey Boilers.

No.....; When Built, 1....; Diameter of.....; Thickness of plate.....; Tensile strength of plate.....; Record in local inspectors' office at.....; Maximum steam pressure allowed to donkey boiler.....pounds; Hydrostatic pressure applied to donkey boiler.....pounds.

FRED. J. MENO,
Inspector of Hulls.

GEORGE M. MILNE,
Inspector of Boilers.

STATE OF MICHIGAN,
County of Wayne, ss:

Subscribed and sworn to before me this 23rd day April, 1914, by Fred J. Meno, Inspector of Hulls, and by George M. Milne, Inspector of Boilers.

MARY H. DOYLE,
Notary Public.

My Commission expires May 11, 1914.

Customhouse,, 191..

I Hereby Certify that the above certificate is a true copy of the original on file in this office.

. of Customs.

On vessels of over 100 gross tons, two copies of this certificate must be framed under glass and posted in conspicuous places in the vessel where they will be most likely to be observed by passengers and others. On vessels of over 25 and not over 100 gross tons, two copies of this certificate must be kept on board, one copy of which must be framed under glass and placed in a conspicuous place in the vessel where it will be most likely to be observed by passengers and others. On vessels of not over 25 gross tons, two copies of this certificate must be kept on board to be shown on demand. (Section 4423, Revised Statutes.)

Steam pleasure yachts are forbidden to carry merchandise or passengers for pay, unless upon change of character by the Inspectors of the Steamboat-Inspection Service.

Indorsements: Form 841 Department of Commerce Steamboat-Inspection Service.

569 Certificate of Inspection for Steam Vessel named Benj. Noble, Gross Tonnage 1481. Owner, Capitol Transportation Co. Inspectors, Fred J. Meno, George M. Milne.

Certificate received at Customhouse April 23, 1914. Certified copies issued by Customs Officer to Master or Owner of Vessel, 191..

Mail certificates to Capt. John Eisenhardt, Steamer "Benj. Noble," Marine Post Office, Detroit, Mich.

EXHIBIT 25.

Telegram, Mitchell & Co. to Francombe.

Copied into Record on page 292.

EXHIBIT 26.

Letter, Mitchell & Co. to Francombe, 3/10/14.

Copied into Record on page 293.

EXHIBIT 27.

Letter, Eisenhardt, Dec. 17, 1912.

Copied into Record, page 296.

EXHIBIT 28.

Letter, Eisenhardt, Jan. 4, 1914.

Copied into Record, page 296.

EXHIBIT 29.

Letter Recommendation, H. L. Jones.

Buffalo, Jan. 20th, 1914.

To whom it may concern:

The bearer John Eisenhardt has been first mate with me for three seasons. Two seasons of which was in the Chicago Duluth and Montreal trade. I can recommend him as a first class man in the canal trade as he is well posted on the above route and is capable of taking a steamer to Montreal, his habits are excellent and he is worth- of a master's position.

H. L. JONES,
Master Steamer "Merida."

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EXHIBIT 30.

Letter, Recommendation, D. Sullivan & Co.

Great Lakes and St. Lawrence Transportation Co.

St. Lawrence Route.

Offices, Western Union Building, 111 West Jackson Boulevard.

D. Sullivan, President & General Manager.

Chicago, January 16, 1914.

To Whom It Concerns:

The bearer of this letter, Mr. John Eisenhardt, has been in our employ for some years as First Mate. He has the very highest recommendations from Captain Jones, whom he served with and is in line for promotion in case of a vacancy. However, as we do not go outside of our employees for executive officers, and as there are two men ahead of him on the line of length of service, we would be very glad to have him better his condition if he can do so, and we have no hesitation whatever in saying that we would appoint him master of one of our vessels if a vacancy existed.

Very truly yours,

D. SULLIVAN,
President & General Manager.

D. S./K.

EXHIBIT 31.

Wire Eisenhardt to Francombe.

Copied into Record, page 301.

EXHIBIT 32.

Wire Francombe to Eisenhardt, Apr. 17, 1914.

Copied into Record, page 302.

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EXHIBIT 33.

Bill for Coal Put on at Conneaut, Ohio.

Conneaut, Ohio, April 30th, 1914.

Bill No. C 4211.

Stmr. Benj. Noble a/c Capitol Transportation Company, Detroit,
Mich.,Credit.
"S."

To the Pittsburgh & Conneaut Dock Company, Dr.

General Offices: Carnegie Building, Pittsburgh, Pa.

Requisition No. Attached.

Apr. 16.	To 159 tons 600 lbs. $3\frac{3}{4}$ Coal @ \$2.80 per ton . .	446.04
	B 12648 83.800	
	12226 83.5	
	11778 68.5	
	11005 73.8	
	U 3962 9.0 part car	
		<hr/> 318.600

By HOIST P. C. CO.

Please Receipt and Return.

Remit to G. W. Kepler, Treasurer, Pittsburgh, Pa. Please refer to bill number shown above.

For further information, address Geo. E. Campbell, Auditor, Pittsburgh, Pa.

Stamped: Paid The Pittsburgh & Conneaut Dock Co. Jun- 12, 1914. G. W. Kepler, Treas.

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The Pittsburgh & Conneaut Dock Company.

Conneaut, Ohio.

April 16, 1914.

Received from The Pittsburgh & Conneaut Dock Company 159,600
Tons $\frac{3}{4}$ Coal at.....Per Ton.

STMR. BENJ. NOBLE.

CAPT. J. EISENHARDT, *Master*.

Remarks.

B	12648	83800
	12226	83500
	11778	68500
	11005	73800
U	3962	9000
		<hr/>
		318600
		159,600

CAPITOL TRANS. CO.,

Detroit, Mich.

EXHIBIT 34.

Certificate of Capt. Eisenhardt.

Serial Number 55715.

File No. 1, 246.

Issue Number 2, 4.

Department of Commerce.

Steamboat Inspection Service.

License to Master of Steam Vessels.

This is to certify that John Eisenhardt has given satisfactory evidence to the undersigned United States Local Inspectors, Steamboat-Inspection Service, for the district of Chicago, Ill., that he can safely be intrusted with the duties and responsibilities of Master of Steam Vessels of not over all gross tons, upon the waters of Northwestern Lakes, Bays and Rivers, and connecting waters between Chicago, Duluth, Buffalo and Montreal and Harbor; and he is hereby
573 licensed to act as such Master for the term of five years from
1914. this date. Given under our hands this 13th day of February,

(Signed)

WILLIAM NICHOLAS,
U. S. Local Inspector of Boilers.

(Signed)

IRA B. MANSFIELD,
U. S. Local Inspector of Boilers.

Chicago, Ill., February 16, 1915.

We hereby certify that the above is a true and correct copy of the Master and Pilot license issued by this Board to the said John Eisenhardt.

IRA B. MANSFIELD,
WILLIAM NICHOLAS,
U. S. Local Inspectors.

On margin: Also First Class Pilot on N. W. L. B. & R. and connecting waters between Chicago, Duluth, Buffalo and Ogdensburg.

EXHIBIT 36.

Government Record at Sault Ste. Marie.

United States of America,

War Department.

Washington, February 11, 1915.

I, Hereby Certify That the attached papers, consisting of three sheets, are true copies as shown by the records and files of the United States Engineer Office at St. Marys Falls, Canal, Mich.

(Sgd.)

DAN C. KINGMAN,
Chief of Engineers, U. S. Army.

I Hereby Certify That Dan C. Kingman, who signed the foregoing certificate, is the Chief of Engineers, United States Army, and that to his certification as such full faith and credit are and ought to be given.

In Testimony Whereof, I, Lindley M. Garrison, Secretary of War, have hereunto caused the Seal of the War Department to be affixed and my name to be subscribed by the Assistant and Chief Clerk of the said Department, at the City of Washington, this 11th day of February, 1915.

(Sgd.)

LINDLEY M. GARRISON,
Secretary of War.

[SEAL.]

By JOHN C. SCOFIELD,
Assistant and Chief Clerk.

"Benjamin Noble" Str.

Up Bound.

Date of passage. 1909.	From—	To—	Miles.	Freight, short tons.	Cargo.	Draft.	
						Ft.	In.
May 26.	Lorain	Ft. William .....	...	2573	Coal Bit.	15	3
June 15.	Buffalo	Superior .....	...	3224	Steel Rails	17	6
July 10.	" .....	" .....	...	3191	" "	17	6
Aug. 1.	Conneaut	Duluth .....	...	3100	" "	17	7
Sept. 26.	Collingwood	Ashland .....	...	0	No cargo	12	9
Canadian Canal							
Nov. 11.	Buffalo	Duluth .....	...	2916	Mfrd. Iron	16	8
Dec. 11.	" .....	" .....	...	2605	" "	16	9
1910.							
May 6.	Buffalo	Duluth .....	...	3024	Railroad Iron	17	
May 29.	"	Ft. William .....	...	2727	Mfrd. Iron	17	5
June 19.	"	Superior .....	...	2800	" "	17	6
July 16.	" .....	" .....	...	3192	" "	17	8
Aug. 6.	Cleveland	Keweenaw Bay .....	...	2400	Coal Bit.	14	10
Aug. 29.	"	Hancock .....	...	2250	" "	14	3
Sept. 25.	Detroit	Marquette .....	...	0	No Cargo	12	10
Oct. 9.	Buffalo .....	" .....	...	2400	Coal Anthr.	14	6

"Benjamin Noble."

575	Date of message.	From—	To—	Miles.	Down Bound.	Freight, short tons.	Cargo.	Draft.	
								Ft.	In.
	1909.								
	June 6.	Pt. Arthur	Detroit	....		2200	1100 Cords Pulpwood	14	10
	June 27.	"	Erie	....		2200	1100 Cords Pulpwood	16	9
	July 21.	"	"	....		2200	1100 Cords Pulpwood	16	6
	Aug. 17.	"	Detroit	....		2200	1100 Cords Pulpwood	15	9
	Oct. 3.	Ashland	Tonawanda	....		2743	Pig Iron	16	
	Nov. 22.	Duluth	Sandusky	....		2370	79000 Bu. Wheat	14	6
	1910.								
	Apr. 22.	Pt. Arthur	Erie	....		3550	Mfrd. Iron 400 tons Pulpwood 1050 cords, 3150 tons.	14	
							Canadian Canal		
	May 19.	"	Detroit	....		2100	1050 cords pulpwood	17	3
	June 9.	"	"	....		2100	1050 cords pulpwood	16	3
	July 7.	"	"	....		2100	1050 cords Pulpwood	16	2
	July 29.	"	"	....		2100	1050 cords Pulpwood	16	
	Aug. 23.	"	"	....		2300	1150 cords Pulpwood	15	11
	Sept. 19.	"	"	....		1500	750 cords Pulpwood	12	10
	Oct. 1.	Marquette	Buffalo	....		3156	Pig Iron	17	7
	Oct. 16.	Presque Isle	"	....		3033	"	16	9

576	Date of passage, 1911.	Up Bound.		Freight, short tons.	Cargo.	Draft, Ft. In.
		From—	To—			
Apr. 25.	Lorain	.....	Ft. William	3021	Coal Bit. Steel Rails	2035 tons 986 "
May 28.	Ashtabula	.....	Two Harbors	2364	Coal Bit. Mfrd. Iron	1300 tons 1064 "
June 19.	Huron	.....	Ft. William	2700	Coal Bit.	2000 tons
July 8.	Toledo	.....	Two Harbors	2770	Coal Bit. Mfrd. Iron	770 "
July 31.	"	.....	"	2800	Coal Bit. Mfrd. Iron	2000 tons 800 "
Aug. 12.	Gary	.....	Ft. William	3259	Steel Rails	16
Sept. 1.	Toledo	.....	Two Harbors	2728	Coal Bit. Mfrd. Iron	2000 tons 728 "
Sept. 17.	Buffalo	.....	Marquette	2650	Coal Bit. Steel Rails	2090 tons 560 "
Oct. 8.	"	.....	"	2300	Coal Anthr.	15
Nov. 15.	"	.....	"	1600	"	14
1912.						
May 3.	Buffalo	.....	Superior	2871	Steel Rails	17
May 28.	Buffalo	.....	Duluth	2800	"	17
June 13.	So. Chicago	Ft. William	3251	Mfrd. Iron	18
June 30.	"	"	3292	"	18
July 20.	"	"	2845	Steel Rails	17

Steamer "Benjamin Noble."

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Date of passage.	From—	To—	Freight, short tons.	Cargo.	Draft.	
					Ft.	In.
Aug. 27.	St. Ignace	Duluth	2182	No cargo	12	10
Oct. 15.	Buffalo	"	2700	Steel Rails	16	10
Nov. 30.	"	"		"	17	6
Down Bound.						
1911.						
May 16.	Pt. Arthur	Erie	2000	1000 cords Pulpwood	15	8
June 12.	"	"	2200	1100 cords Pulpwood	16	
June 28.	Two Harbors	Cleveland	3136	Iron Ore	17	
July 18.	Black Bay	Erie	2200	1100 cords Pulpwood	15	6
Aug. 5.	Two Harbors	So. Chicago	3248	Iron Ore	17	10
Aug. 22.	Superior	Cleveland	3248	"	18	
Sept. 9.	Two Harbors	"	3248	"	17	4
Sept. 28.	Marquette	Buffalo	3174	Pig Iron	17	11
Oct. 17.	Presque Isle	"	3114	"	17	10
Nov. 26.	Duluth	"	2475	1650 M. ft. Lumber	14	6
1912.						
May 13.	Superior	Kingston	2280	76,000 bu. Wheat	14	4
June 4.	"	So. Chicago	3136	Iron Ore	17	3
June 23.	Two Harbors	"	3248	"	17	6
July 15.	Ashland	"	3248	"	17	8
July 29.	Duluth	Buffalo	3248	"	17	6
Aug. 30.	Superior	Kingston	2310	77,000 bu. Wheat	14	6
Nov. 15.	"	Desoronto	2240	Iron Ore	14	5

Date of passage.		From—		To—		Up-bound.		Freight, short tons.		Cargo.		Draft.	
						Miles.						Feet.	Inches.
1913.													
Aug. 30.	Superior	Buffalo	Duluth	.....	.....	2850	Steel Rails	.....	.....	.....	.....	17	10
Nov. 15.	"	Milwaukee	Two Harbors	.....	.....	.....	No Cargo	.....	.....	.....	.....	12	6
		"	"	.....	.....	.....	"	.....	.....	.....	.....	12	
		Buffalo	Marquette	.....	.....	2500	Coal Anthracite	.....	.....	.....	.....	15	6
		"	Ashtabula	.....	.....	2500	"	.....	.....	.....	.....	15	6
		Soo, Mich.	Duluth	.....	.....	.....	No Cargo	.....	.....	.....	.....	13	
		Oswego	Ft. William	.....	.....	2332	Coal Anthracite	.....	.....	.....	.....	17	10
		Ashtabula	Duluth	.....	.....	2512	Coal Br't	.....	.....	.....	.....	15	10
		"	"	.....	.....	2242	Mfrd. Iron	.....	.....	.....	.....	15	10
		"	"	.....	.....	2242	Coal Br't	.....	.....	.....	.....	15	4
		"	"	.....	.....	1700	Mfrd. Iron	.....	.....	.....	.....	13	6
		Buffalo	Marquette	.....	.....	.....	Coal Anthracite	.....	.....	.....	.....	.....	.....
1914.													
Nov. 17.	Buffalo	Marquette	.....	.....	.....	.....	Mfrd. Iron	.....	.....	.....	.....	18	3
Apr. 25.	Conneaut	Duluth	.....	.....	.....	2950	Mfrd. Iron	.....	.....	.....	.....	18	3

Steamer "Benjamin Noble."

Date of passage, 1913.	From—	To—	Down-bound.			Draft. Feet. Inches.
			Miles.	Freight, short tons.	Cargo.	
April 25.	Duluth	Kingston	....	2310	Wheat, 77,000 bu.	14 6
May 26.	"	Deseronto	....	2864	Iron Ore 2,455 Timber M Ft. 273	16 10
					(The timber equals 409 Tons.)	
June 17.	Two Harbors	"	....	2532	Iron Ore	15
July 10.	"	"	....	2552	"	14 6
" 28.	Marquette	"	....	2352	"	15 3
Aug. 16.	Two Harbors	"	....	2352	"	14 3
Sept. 3.	Superior	"	....	2352	"	14 8
" 22.	"	Kingston	....	2310	Wheat 77,000 bu.	14 8
Oct. 13.	"	"	....	2340	" 78,000 "	14 3
Nov. 5.	Duluth	"	2340	" 78,000 "	14 8
" 30.	Two Harbors	Cleveland	2550	Lumber 1,700 M Ft.	14 10

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Gov. Record (Richardson) Re Velocities Ten Years.

Form No. 1078—Met'l.

U. S. Department of Agriculture, Weather Bureau.

Station, Duluth, Minn.

Daily maximum wind velocities (any 5 minute period). Data—Gales—Maximum wind velocities at rate of 40 miles (or greater) per hour, are shown in *italic* figures.

19	April, 1905.	April, 1906.	April, 1907.	April, 1908.	April, 1909.	April, 1910.	April, 1911.	April, 1912.	April, 1913.	April, 1914.	Total.
1	32 NE	18 SW	21 NE	<i>43 W</i>	12 NW	12 NW	18 W	28 NW	32 W	28 NW	<i>1</i>
2	29 NE	14 NE	21 SW	<i>42 NW</i>	20 S	34 NE	24 NE	26 NW	<i>41 NE</i>	21 NW	<i>2</i>
3	33 NW	30 SW	34 NE	17 E	27 SW	20 NE	23 NE	34 SW	36 NE	19 W	
4	39 N	24 W	36 NE	25 E	29 NE	34 NW	38 NE	18 SW	25 NW	25 NW	
5	23 W	23 NW	34 NE	39 W	24 W	35 NW	24 W	30 SW	15 NW	20 W	
6	22 NW	20 SW	28 NE	30 W	28 NE	29 NW	27 W	<i>46 NW</i>	18 NE	29 NW	<i>1</i>
7	21 W	28 NE	30 NW	34 NE	35 NW	24 NE	19 W	30 W	35 NE	30 NW	
8	18 NW	36 NE	37 NW	26 SW	37 NW	25 NW	17 NE	25 NE	35 NE	33 NW	
9	39 NW	26 NE	39 NW	<i>43 SW</i>	20 NW	25 NW	19 S	21 NW	37 NE	32 NW	<i>1</i>
10	30 NW	22 W	20 N	<i>55 NW</i>	33 NE	38 NE	15 NE	24 NE	<i>49 NE</i>	36 NW	<i>2</i>
11	26 NW	29 NW	30 NW	31 NW	<i>47 NW</i>	<i>49 NE</i>	18 NE	31 NE	20 NE	33 SW	<i>2</i>

EXHIBIT 42—Continued.

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	April, 1905.	April, 1906.	April, 1907.	April, 1908.	April, 1909.	April, 1910.	April, 1911.	April, 1912.	April, 1913.	April, 1914.	Total.
19											
12	24 NW	44 NE	34 NW	34 SW	22 W	19 NE	30 NE	39 NE	19 W	26 NE	1
13	28 NW	33 NE	18 NW	26 NE	15 N	18 SW	54 SW	48 NE	28 W	19 NE	2
14	26 NW	44 NW	16 NE	54 NW	16 N	25 NE	35 W	39 NE	18 NE	28 NE	2
15	32 NW	15 W	37 W	30 NW	16 NE	26 SW	45 W	33 NW	17 NE	21 NE	1
16	38 NW	25 SW	60 NW	21 NE	28 NE	33 NW	9 NW	17 NW	25 NE	24 NE	1
17	29 NW	36 SW	15 NW	13 NE	25 NE	17 NW	21 NE	20 NE	32 SW	31 NE	
18	28 SW	36 W	11 NW	43 NW	31 NW	37 NW	15 NE	16 NW	38 NW	41 NE	2
19	27 NW	30 NW	18 NW	23 NE	18 NW	20 NW	21 NE	13 NE	18 W	38 N	
20	20 NE	40 SW	21 W	21 N	17 SW	20 NE	18 NW	32 NE	18 NE	25 NE	1
21	17 NE	48 NW	44 SW	32 SW	24 W	25 NW	23 N	35 NE	35 SW	26 W	3
22	17 NW	18 NW	23 W	23 SW	43 W	47 NW	16 NE	24 NW	21 NE	25 NE	2
23	30 SW	23 SW	24 NW	48 NE	19 W	44 NW	17 NE	39 W	27 W	32 NE	2
24	22 NW	30 NE	32 NW	38 NE	16 NE	18 NW	13 N	21 SW	38 NW	31 NE	
25	13 SW	38 NE	24 NW	15 SW	25 SW	19 NE	14 NE	36 S	28 SW	14 NE	
26	17 NE	39 NE	42 SW	34 NE	50 W	16 NW	15 NE	70 NW	23 W	14 NE	3
27	28 NE	33 NE	35 N	30 NE	32 NW	40 NE	16 NE	37 NW	15 NE	42 NE	2
28	17 NW	39 NE	30 NE	23 NW	35 NE	32 NE	13 NE	19 NE	20 NE	51 NE	1
29	34 NW	16 NE	25 NW	16 W	60 NE	33 NE	33 NW	24 NE	16 E	28 NE	1
30	17 W	27 NE	16 SW	17 SW	50 NE	26 NW	36 NW	27 NE	29 SW	18 NE	1
31											
Sum	0	4	3	7	5	4	2	3	2	3	33
Means											

Prepared by H. W. RICHARDSON,
Local Forecaster.

Feb. 13, 1915.

Form No. 1022—Met'l

S. DEPARTMENT

75th meridian time.

At L

Day.	0 to 1	1 to 2	2 to 3	3 to 4	4 to 5	A. M. 5 to 6	6 to	7 to 8	8 to 9	9
								3	4	
								5	6	
1	8	8	9	8	8	7		15	16	
				<i>31</i>	<i>44</i>	<i>60</i>	<i>54</i>	15	12	
2	22	26	25	29	39	49		15	12	
3	12	10	9	7	5	5		14	8	
4	16	18	15	15	17	16		3	4	
5	5	3	3	3	3	4		7	9	
			<i>31</i>	<i>30</i>				<i>32</i>	<i>35</i>	<i>8</i>
6	27	27	29	28	22	22		29	31	
								13	10	
7	10	11	13	15	14	13		5	6	
	<i>41</i>	<i>39</i>	<i>45</i>	<i>43</i>	<i>42</i>	<i>40</i>	<i>48</i>	25	23	<i>30</i>
8	37	37	35	40	38	39		24	25	
				<i>31</i>	<i>32</i>	<i>31</i>	<i>36</i>			
9	24	26	26	29	29	30		23	21	
10	19	18	16	13	11	8		20	30	<i>3</i>
								7	7	
11	4	3	5	5	1	3		11	11	
12	11	10	11	10	10	11	1	6	10	
13	9	10	11	8	8	9				<i>3</i>
								12	20	
14	4	3	0	2	2	3				
	<i>36</i>	<i>34</i>	<i>33</i>	<i>38</i>	<i>33</i>	<i>30</i>		19	14	
15	33	33	32	35	29	28	2	1	30	<i>32</i>
16	10	14	17	16	18	16	1	28	29	
17	8	10	10	11	12	10	1	1		
18	18	20	19	20	19	16	1	9	7	
19	11	11	11	12	14	14	1	10	10	
20	10	13	12	13	13	12	1	10	8	
21	16	17	16	14	13	12	1			
						<i>36</i>	<i>31</i>	12	13	
22	17	14	21	24	25	26	2	19	23	<i>3</i>
23	26	22	16	13	10	7				
24	17	12	7	12	19	11		23	31	<i>3</i>
				<i>30</i>	<i>32</i>			23	28	
25	22	13	17	29	30	26		29	28	<i>3</i>
26	11	9	11	16	17	18	1	26	28	
27	8	6	6	5	3	5		5	4	
28	10	8	9	10	10	8		12	10	
29	6	8	8	7	4	4				
30	8	9	9	8	9	8				
31										

Sums,
Means.*Italic figures indicate the maximum wind velocity.*Velocities at the
Average hourly

Prepared by

8

Form No. 1022—Met'l

U. S. DEPARTMENT OF AGRICULTURE, WEATHER BUREAU.
Hourly Wind Movement
At Duluth, Minn., during April, 1906.

75th meridian time.

Day.	0 to 1	1 to 2	2 to 3	3 to 4	4 to 5	A. M. 5 to 6	6 to 7	7 to 8	8 to 9	9 to 10	10 to 11	11 to 12 noon	12 to 1 1 p. m.	1 to 2	2 to 3	3 to 4	4 to 5	5 to 6	P. M. 6 to 7	7 to 8	8 to 9	9 to 10	10 to 11	11 to 12 Mid.	E. A. E. H.
1	3	1	4	4	2	3	1	3	4	6	11	16	13	14	13	9	4	2	3	3	7	11	12	12	To
2	10	4	3	2	2	2	2	5	6	4	6	6	9	10	12	12	12	10	10	10	7	7	7	7	hc
3	8	8	5	3	3	4	5	15	16	17	25	23	25	24	25	24	19	20	15	13	14	16	16	15	
4	18	13	16	16	16	15	16	15	12	11	9	7	9	5	7	7	9	7	6	10	12	13	16	11	
5	14	16	17	16	18	20	19	14	8	5	6	7	9	9	12	18	19	18	19	15	13	12	10	6	
6	5	7	6	3	3	3	3	3	4	9	5	5	5	5	16	15	13	8	4	2	2	1	6	3	
7	2	10	14	12	12	10	8	7	9	9	9	11	9	8	8	10	9	15	13	20	23	21	24	24	
8	23	23	23	25	25	24	30	32	35	32	30	34	30	27	24	27	25	26	35	36	35	33	32	30	
9	24	22	22	21	19	16	28	29	31	30	26	30	27	24	27	25	26	31	32	31	30	29	28	28	
10	7	5	6	8	3	8	13	13	10	8	8	5	5	7	13	13	9	8	7	6	4	2	6	6	
11	22	23	23	23	21	22	27	25	23	16	12	12	10	9	8	8	5	6	5	7	13	17	18	19	
12	18	18	18	17	17	22	22	24	25	28	29	33	34	35	42	44	44	42	40	36	36	37	35	32	
13	30	30	30	31	33	32	31	23	21	14	18	20	18	12	14	7	4	5	2	4	6	12	21	27	
14	29	29	19	16	15	14	15	20	30	30	28	26	33	30	27	33	39	40	33	37	31	28	12	8	
15	4	7	9	9	9	8	7	7	7	6	4	6	6	8	7	7	6	6	6	9	10	10	13	4	
16	11	14	15	13	10	6	10	11	11	13	13	18	19	19	20	18	20	21	18	15	15	14	15	14	
17	11	16	13	9	9	12	2	6	10	10	12	17	21	22	25	22	25	27	25	21	21	22	19	21	
18	19	20	18	17	18	16	11	12	20	28	30	27	24	20	23	18	22	17	14	11	7	9	18	34	
19	25	13	17	13	11	15	18	19	14	9	16	22	24	22	21	21	23	19	12	8	11	12	14	12	
20	18	23	20	24	26	23	22	28	29	34	31	30	34	32	29	25	21	21	16	12	10	17	15	12	
21	11	12	15	11	11	16	12	9	7	12	15	17	23	30	31	41	35	29	21	22	20	15	15	13	
22	12	15	11	14	15	15	14	10	10	15	13	11	8	12	9	8	5	6	7	8	7	9	6	4	
23	3	8	12	11	14	13	9	10	8	16	20	16	18	19	17	18	14	13	13	13	11	9	5	6	
24	7	7	4	6	6	8	9	12	13	19	22	24	26	26	25	27	19	12	8	7	9	12	16	17	
25	20	22	23	23	24	27	26	19	23	29	21	25	28	32	35	32	24	26	31	31	26	17	19	16	
26	17	14	11	16	21	16	22	23	31	32	30	31	33	29	26	34	31	27	20	21	19	20	18	18	
27	17	17	19	18	22	23	25	29	28	30	31	23	22	27	24	20	23	16	14	11	13	16	21	22	
28	19	22	17	19	22	22	21	26	28	28	29	30	29	33	37	33	32	31	29	20	20	22	19	14	
29	12	15	14	10	7	5	10	5	4	3	3	4	5	4	4	3	4	7	8	9	8	3	4	9	
30	15	20	16	15	13	11	11	12	10	10	12	10	9	18	20	24	24	20	18	18	18	16	18	20	
31																									

Sums,
Means,*Estimated. *Italic figures indicate the maximum Wind Velocities at the rate of 30 miles, or more, per hour which continued for 5 minutes.*

Prepared by..... Average hourly velocity.....

Form No. 1022--Met'l

U. S. DEPARTMENT OF AGRICULTURE, WEATHER BUREAU.

Hourly Wind Movement
At Duluth, Minn., during April, 1907.

75th meridian time.

At Dakota, Minn., during April, 1907.																										E. H.
Day	A. M.															P. M.										
	0 to 1	1 to 2	2 to 3	3 to 4	4 to 5	5 to 6	6 to 7	7 to 8	8 to 9	9 to 10	10 to 11	11 to 12 noon.	12 noon to 1 p. m.	1 to 2	2 to 3	3 to 4	4 to 5	5 to 6	6 to 7	7 to 8	8 to 9	9 to 10	10 to 11	11 to Mid.		
1	4	8	6	6	6	6	9	9	11	16	15	15	18	19	16	14	14	13	10	10	9	13	16	15		
2	19	19	14	11	11	10	10	11	6	5	4	5	7	6	10	15	14	11	10	11	15	16	13	14		
3	12	13	13	14	17	16	24	24	25	25	25	24	20	17	15	15	18	22	26	28	26	22	24	28		
4	31	30	30	31	30	30	28	29	32	30	30	26	26	26	21	20	17	15	12	10	10	13	15	15		
5	21	20	17	15	14	16	19	24	26	26	27	25	25	29	31	29	32	31	30	31	26	23	20	14		
6	11	11	11	11	13	14	14	13	13	16	20	22	24	25	25	25	23	19	15	13	10	8	13	9		
7	8	9	4	5	7	9	12	11	9	9	9	8	6	3	3	2	1	7	14	16	20	24	22	25		
8	20	17	17	19	18	19	19	21	22	26	26	29	25	20	27	30	34	29	22	21	21	17	16	19		
9	19	16	33	32	23	16	21	25	25	29	23	21	21	20	21	20	23	21	17	13	16	23	12	10		
10	11	12	12	8	11	15	11	9	8	8	6	8	10	11	6	8	10	10	10	9	11	12	11	9		
11	10	8	7	6	7	6	5	6	6	5	5	7	8	5	4	11	16	10	16	19	26	27	20	8		
12	10	9	16	19	24	26	23	29	29	26	24	20	20	19	21	21	18	18	15	11	14	16	17	15		
13	14	12	11	10	12	11	14	9	11	10	12	12	15	13	15	16	15	11	10	7	7	8	8	7		
14	9	12	13	12	11	9	4	2	6	7	8	7	8	7	9	11	12	14	15	12	13	11	10	10		
15	12	14	15	15	14	10	12	12	10	10	12	9	7	1	17	24	25	23	23	26	25	26	28	32		
16	39	45	54	55	40	40	55	48	42	16	21	20	19	19	17	15	16	16	16	12	10	7	8	8		
17	7	6	9	12	11	11	11	8	8	7	7	6	6	6	7	5	7	7	7	8	6	6	7	9		
18	7	8	7	9	9	10	9	10	7	6	8	9	9	9	7	8	6	4	3	3	2	2	3	5		
19	10	11	13	15	17	16	16	18	10	7	10	10	12	12	13	11	5	4	4	8	11	13	13	14		
20	12	12	10	10	9	12	13	13	9	14	12	11	15	16	17	17	17	15	11	12	14	15	14	14		
21	16	19	20	21	24	25	23	22	24	31	36	39	36	35	39	37	34	28	26	24	26	21	16	11		
22	15	17	19	15	13	13	13	11	5	5	8	13	13	15	13	17	16	17	15	12	15	14	14	15		
23	14	13	13	15	16	16	15	11	11	13	18	18	19	19	15	13	15	13	11	12	12	12	13	12		
24	12	8	4	2	4	3	3	2	2	4	4	4	4	12	13	16	15	9	8	10	21	27	24	24		
25	20	14	14	16	13	7	13	13	11	10	12	8	10	12	10	11	8	10	8	7	7	6	3	1		
26	1	5	7	7	8	3	8	13	14	13	17	20	19	19	21	22	21	22	28	25	19	12	17	23		
27	20	23	29	20	14	11	11	9	10	12	12	10	8	7	8	10	12	14	14	15	13	14	15	17		
28	19	20	17	15	14	18	20	22	23	24	27	26	25	22	24	19	17	11	7	9	9	12	11	7		
29	6	9	10	15	18	20	22	24	19	17	16	11	9	8	10	7	5	6	10	8	9	9	11	13		
30	11	12	11	10	9	9	11	6	4	6	7	7	11	10	8	5	4	4	1	2	5	10	13	13		
31																										

Sums,

Means,

* Interpolated

Prepared by.....
Average hourly velocity.....

..... continued for 5 minutes.

Weather Bureau.

Form No. 1022—Met'l

U. S. DEPARTMENT OF AGRICULTURE, WEATHER BUREAU.

Hourly Wind Movement

At Duluth, Minn., during April, 1908.

75th meridian time.

At Durham, Minn., during April, 1903.																									E. H.
Day	A. M.												P. M.												11 to Mid.
	0 to 1	1 to 2	2 to 3	3 to 4	4 to 5	5 to 6	6 to 7	7 to 8	8 to 9	9 to 10	10 to 11	11 to 12 noon.	1 to 2	2 to 3	3 to 4	4 to 5	5 to 6	6 to 7	7 to 8	8 to 9	9 to 10	10 to 11			
1	35	33	31	32	26	24	26	23	17	15	14	12	9	20	20	43	40	37	34	31	30	27	31	30	
2	36	37	39	39	41	42	40	37	33	38	31	22	24	25	22	31	20	21	19	16	12	8	10	11	
3	31	33	38	37	40	37	36	33	31	22	24	25	22	25	20	21	10	7	16	12	8	10	11	12	
4	11	13	11	12	10	11	11	13	18	21	20	21	22	22	21	18	13	12	11	10	4	6	13	12	
5	23	24	30	30	24	22	24	25	21	21	25	26	29	27	32	31	27	21	12	11	13	15	14	16	
6	30	25	20	18	11	15	14	15	16	18	20	22	18	20	22	20	18	16	15	9	11	14	12	11	
7	13	14	17	18	19	22	22	20	22	22	22	26	27	34	32	29	27	27	26	26	24	21	19	15	
8	12	13	14	13	10	9	7	6	3	4	6	9	14	17	17	22	22	21	17	17	16	17	18	15	
9	14	15	15	17	16	13	13	19	15	12	25	26	28	37	37	42	43	39	35	29	21	18	20	19	
10	33	29	23	20	34	44	35	18	21	33	32	34	29	31	31	38	39	40	44	45	40	42	35	52	
11	18	26	24	17	20	21	25	26	26	26	23	21	23	21	18	18	15	13	7	10	10	13	19	16	
12	18	13	10	13	22	28	27	28	28	23	14	16	15	12	11	6	5	7	10	16	22	28	25	21	
13	23	23	21	19	21	12	12	15	13	17	20	17	17	21	21	20	23	20	18	15	13	12	11	6	
14	8	15	14	17	19	23	22	25	35	38	34	34	29	35	30	33	34	28	22	36	46	54	32	21	
15	14	17	21	19	27	17	14	14	10	13	14	15	14	13	12	12	10	9	7	7	10	11	9	9	
16	7	7	9	10	9	9	10	10	12	13	15	14	13	14	17	16	16	16	15	15	13	13	14	13	
17	11	10	10	11	10	11	12	10	8	11	11	10	9	10	10	11	10	8	6	5	5	6	5	1	
18	2	1	1	4	6	4	7	6	8	8	14	15	20	22	31	26	39	43	32	30	30	32	31	19	
19	14	10	12	12	14	11	6	6	4	5	10	14	12	17	19	19	15	9	3	2	4	16	17	16	
20	8	7	9	10	14	13	12	10	7	11	13	14	10	12	14	12	12	9	10	10	12	13	11	10	
21	7	8	8	12	9	9	11	10	11	14	13	9	9	9	9	7	5	2	4	9	19	26	32	31	
22	20	15	16	18	10	13	20	10	4	5	9	8	9	7	6	6	7	10	7	8	11	13	12	9	
23	12	17	22	22	20	24	37	40	34	33	36	37	42	43	48	40	42	40	37	38	41	42	34	31	
24	24	28	20	22	26	25	22	25	29	29	32	33	29	32	30	27	25	22	20	16	20	18	13	3	
25	3	7	9	5	3	5	1	2	4	5	3	1	3	7	6	7	10	13	12	9	8	8	9	9	
26	9	9	8	9	8	8	9	7	7	8	6	14	23	30	22	20	21	20	22	26	24	25	32	34	
27	30	26	23	20	11	10	12	16	20	23	21	20	15	18	16	17	16	16	17	17	17	18	16	15	
28	16	16	18	19	22	21	21	20	18	16	11	11	8	6	6	5	5	4	3	3	3	2	3	2	
29	2	3	4	5	4	2	3	5	8	6	6	5	4	6	10	10	12	8	4	4	7	10	8	3	
30	4	5	4	6	5	7	6	7	6	5	6	4	6	5	13	14	11	10	8	9	10	8	8	9	
31																									

Sums,

Means,

• Interpolated

Italic figures indicate the maximum wind velocities at the rate of 30 miles, or more, per hour, which continued for 5 minutes.

Prepared by Average hourly velocity.....

U. S. DEPARTMENT OF AGRICULTURE, WEATHER BUREAU.
Hourly Wind Movement
At Duluth, Minn., during April, 1909.

75th meridian time.

Day	0 to 1	1 to 2	2 to 3	3 to 4	4 to 5	A. M. 5 to 6	6 to 7	7 to 8	8 to 9	9 to 10	10 to 11	11 to 12	noon.	1 p. m.	2 to 3	3 to 4	4 to 5	5 to 6	P. M. 6 to 7	7 to 8	8 to 9	9 to 10	10 to 11
1	25	25	25	21	20	19	19	9	18	15	9	10	12	11	16	15	14	15	1	0	0	1	0
2	11	12	12	14	13	14	12	14	15	15	14	14	14	16	9	6	3	15	14	12	10	10	
3	15	17	19	23	21	21	24	23	21	18	18	22	24	20	19	22	21	16	15	14	12	10	10
4	7	6	2	5	4	3	4	8	17	18	21	23	23	25	27	24	20	18	7	10	9	9	10
5	9	7	6	7	7	5	7	6	4	3	1	8	14	18	18	20	19	17	15	14	26	30	34
6	6	3	7	9	7	9	12	10	13	15	15	11	16	19	16	20	23	21	15	14	26	26	31
7	26	27	29	20	11	16	20	26	27	25	28	28	29	27	26	27	22	28	18	24	28	17	4
8	29	30	31	33	33	35	34	33	35	32	27	23	20	20	18	20	20	18	6	6	7	4	7
9	13	15	16	15	14	13	14	13	15	13	12	14	14	15	13	13	15	11	12	12	14	16	15
10	7	11	10	10	9	10	9	11	12	14	16	21	23	25	27	28	28	27	30	36	37	34	38
11	16	16	16	15	15	13	13	10	9	11	11	17	17	12	22	20	22	17	30	32	33	31	32
12	9	7	7	7	8	9	12	12	12	14	15	17	15	14	16	18	17	18	27	24	20	20	19
13	5	3	6	8	10	9	11	8	6	6	6	4	5	7	8	6	6	11	11	10	10	7	
14	15	14	14	14	12	13	11	10	8	9	8	8	7	7	8	8	8	11	3	3	5	6	11
15	6	7	6	6	4	1	3	2	5	5	7	8	8	10	13	13	12	11	11	12	13	16	
16	12	13	13	12	12	9	11	15	18	20	22	23	27	23	24	20	17	18	4	12	15	19	23
17	8	8	8	8	9	12	10	12	13	13	15	12	19	23	20	11	14	15	9	24	23	16	29
18	13	10	5	18	15	17	21	28	24	16	13	12	9	6	6	5	5	10	5	12	10	6	7
19	17	16	17	16	16	13	12	10	4	5	8	7	9	9	9	7	7	10	36	33	30		
20	3	6	4	11	12	13	15	11	8	11	13	15	10	6	7	7	6	10	33	28	23	19	18
21	5	8	8	10	5	5	9	8	3	12	12	18	11	15	17	17	17	15	16	18	19	17	16
22	15	14	12	12	13	11	14	25	26	21	24	21	24	25	28	23	26	21	2	11	18	15	10
23	14	15	13	7	4	6	9	12	14	15	14	15	13	14	14	15	12	10	24	24	22	24	22
24	8	8	11	11	11	11	11	10	13	12	14	12	13	12	11	12	10	10	33				
25	9	8	7	6	5	4	3	4	5	8	7	9	7	6	6	8	17	21	28	22	26	26	20
26	9	9	2	4	5	6	4	5	5	4	5	7	7	7	6	6	10	34	11	11	13	11	9
27	26	21	23	18	18	15	18	17	17	19	23	20	20	21	25	21	15	15	36	33	31	35	32
28	4	2	5	9	11	7	10	14	16	17	18	20	22	23	23	26	25	21	33	30	30	31	29
29	31	34	35	34	35	41	43	40	42	46	48	50	52	51	49	52	50	44	17	13	15	17	13
30	40	44	42	42	39	38	34	32	29	23	20	19	17	17	10	2	2	1	9	6	3	5	7

Sums,
Means,

*Estimated.

Italic figures indicate the maximum wind velocities at the rate of 30 miles, or more, per hour, which continued for 5 minutes.

Prepared by Average hourly velocity

Form No. 1022—Met'l

U. S. DEPARTMENT OF AGRICULTURE, WEATHER BUREAU.

Hourly Wind Movement

At Duluth, Minn., during April, 1910.

75th meridian time.

Day	0 to 1	1 to 2	2 to 3	3 to 4	4 to 5	A. M. 5 to 6	6 to 7	7 to 8	8 to 9	9 to 10	10 to 11	11 to 12 noon.	Noon to 1 1 p. m.	1 to 2	2 to 3	3 to 4	4 to 5	5 to 6	P. M. 6 to 7	7 to 8	8 to 9	9 to 10	10 to 11
1	7	8	4	2	3	5	8	5	4	3	5	5	8	7	7	7	3	3	1	*0	*0	*1	*0
2	*0	*0	*0	*0	*1	*0	*0	5	15	13	7	12	23	29	27	24	14	13	15	14	12	10	10
3	5	7	4	6	5	4	4	4	4	8	13	16	18	14	14	12	8	6	7	10	9	9	10
4	7	8	6	7	8	5	11	6	3	3	4	5	9	7	9	7	4	8	15	14	26	26	31
5	29	32	22	17	21	16	15	16	14	15	16	20	25	22	20	21	19	19	18	24	28	17	4
6	25	28	26	22	6	5	8	7	11	5	7	14	14	13	11	9	8	5	6	6	7	4	7
7	9	11	11	11	12	14	16	16	19	20	18	18	22	21	16	19	18	13	13	14	15	15	15
8	15	9	5	8	14	4	8	20	20	16	14	15	15	14	12	12	9	11	12	12	14	16	15
9	13	11	10	12	21	24	24	11	5	6	6	6	6	6	6	6	6	5	7	8	11	13	10
10	14	15	17	22	17	17	17	22	22	21	19	18	26	28	28	31	32	31	30	32	33	31	32
11	31	31	33	35	40	41	45	42	41	41	37	38	37	36	33	29	28	25	27	24	20	20	19
12	18	16	16	17	13	13	11	13	10	10	7	9	11	13	15	14	15	14	11	11	10	10	7
13	5	8	10	8	5	4	10	13	4	2	8	10	10	12	13	13	12	12	3	3	5	6	11
14	9	8	8	6	8	7	11	9	11	17	22	20	23	21	20	17	15	14	11	11	12	13	16
15	10	11	10	8	15	15	14	10	20	15	15	11	11	14	16	13	13	7	4	12	15	19	23
16	20	17	17	14	11	17	16	12	13	15	11	9	7	4	7	5	5	5	9	24	23	16	29
17	11	13	7	7	9	8	10	11	11	12	11	8	6	4	5	3	3	3	5	12	10	6	7
18	7	6	7	11	11	10	12	10	7	5	6	7	7	9	17	27	30	31	33	28	23	19	18
19	17	16	14	19	15	11	14	17	11	9	6	7	6	6	5	4	1	2	4	7	7	10	8
20	4	6	5	2	2	3	4	5	4	6	8	8	9	13	14	18	19	17	16	18	19	17	16
21	17	17	17	15	14	13	13	16	15	17	15	14	15	12	13	14	14	5	2	11	18	15	10
22	3	4	4	15	18	31	38	42	37	27	25	22	23	25	25	23	23	26	24	24	22	24	22
23	24	19	23	19	24	26	33	38	39	37	35	37	36	32	28	34	32	31	28	22	26	26	20
24	16	15	16	16	15	11	12	13	12	13	9	7	11	9	9	9	10	10	11	11	13	11	
25	14	17	18	17	17	15	16	17	15	15	12	9	10	14	13	12	16	18	15	12	8	8	12
26	13	12	11	14	13	10	7	7	6	5	4	5	5	6	10	8	4	2	2	3	5	10	12
27	16	19	26	27	30	26	24	26	29	34	35	34	31	28	31	30	29	30	33	30	30	31	29
28	30	29	24	25	23	21	22	20	20	22	22	20	19	17	18	16	21	18	17	13	15	17	13
29	19	18	19	23	22	24	24	25	31	29	29	29	31	28	24	19	11	2	1	7	16	18	14
30	13	20	25	24	24	20	9	5	6	6	5	6	4	6	13	9	11	8	9	6	3	5	7
31																							

Sums,
Means,

*Doubtful record Light Wind Anemometer Cups Loose.

Italic figures indicate the Maximum Wind Velocities at the rate of 30 miles, or more, per hour, which continued for 5 minutes.

Prepared by Average hourly velocity.....

Exhibit 43, Gov. Record (Washington).

E. A. E. H.						Total 24 hours.
P. M. 6 to 7	7 to 8	8 to 9	9 to 10	10 to 11	11 to Mid.	
9	7	9	11	13	11	
17	18	15	17	17	18	
20	20	21	18	17	17	
³⁵ 31	³³ 32	³⁵ 30	³² 28	23	16	
17	17	17	15	15	14	
13	10	12	13	15	16	
2	5	5	3	2	5	
5	7	8	10	15	15	
7	7	8	7	8	5	
8	6	7	7	6	5	
10	10	7	8	7	6	
				³⁰ 28	26	
20	19	19	20	28	26	
³⁸ 32	³⁷ 31	³⁵ 32	³⁹ 32	³³ 29	³³ 28	
³² 18	18	³² 26	20	20	16	
³¹ 27	18	17	10	6	5	
5	8	7	3	3	5	
15	12	7	8	4	8	
8	3	2	9	5	4	
9	8	9	10	9	9	
14	9	9	9	11	13	
7	11	11	7	9	3	
12	12	14	11	12	10	
15	12	11	11	10	8	
9	9	8	11	12	9	
10	7	10	10	10	9	
12	11	7	6	4	4	
15	11	5	9	6	2	
8	11	12	11	9	9	
					³³ 26	
9	8	2	1	19	26	
13	17	15	17	17	14	

.....
Weather Bureau.

Form No. 1022--Met'l

U. S. DEPARTMENT OF AGRICULTURE, WEATHER BUREAU.

Hourly Wind Movement
At Duluth, Minn., during April, 1913.

75th meridian time.

At Durdin, Maine, during April, 1918.																							
Day	A. M.												P. M.										
	0 to 1	1 to 2	2 to 3	3 to 4	4 to 5	5 to 6	6 to 7	7 to 8	8 to 9	9 to 10	10 to 11	11 to 12 noon.	12 to 1 p. m.	1 to 2	2 to 3	3 to 4	4 to 5	5 to 6	6 to 7	7 to 8	8 to 9	9 to 10	10 to 11
1	³⁰ 28	³⁰ 28	³² 31	³¹ 29	³¹ 28	28	27	27	19	13	16	14	12	13	12	³⁴ 14	³⁶ 9	³⁸ 4	⁴¹ 3	⁴¹ 1	³⁸ 1	³⁷ 2	
2	2	3	2	3	4	10	14	13	18	17	20	23	28	³⁴ 29	³⁴ 32	³⁵ 32	³⁶ 32	³⁸ 36	⁴¹ 39	⁴¹ 36	³⁸ 34	³⁷ 34	
3	³⁵ 33	³⁶ 31	³⁴ 31	³⁵ 31	³⁵ 30	26	23	³¹ 27	³⁵ 29	³⁴ 30	³¹ 27	23	³² 26	25	20	20	15	15	13	11	15	17	
4	15	16	13	15	13	12	14	12	15	14	17	18	18	17	17	23	20	14	12	11	10	10	
5	9	8	12	12	11	12	13	12	9	8	3	4	5	4	6	5	4	3	2	3	5	8	
6	13	11	13	13	11	10	8	7	9	9	8	9	11	12	10	11	13	11	10	11	16	16	
7	17	15	17	17	15	16	19	22	26	³⁰ 28	³¹ 30	³² 30	³³ 30	³⁵ 32	³⁵ 31	³⁴ 31	³³ 28	³⁵ 29	³² 27	³³ 28	26	25	
8	19	15	15	20	20	18	19	20	19	18	19	21	21	21	25	25	³⁵ 29	³² 25	25	25	22	21	
9	18	17	17	19	20	21	20	22	25	27	25	25	25	25	³³ 26	22	27	24	³⁷ 31	³³ 28	³³ 27	26	
10	27	25	24	21	23	25	⁴⁰ 34	³⁷ 34	⁴³ 37	⁴⁶ 40	⁴⁵ 40	⁴¹ 36	⁴² 34	⁴⁹ 39	⁴² 36	³⁹ 32	³² 28	²¹ 21	18	22	23	20	
11	18	19	13	14	13	15	15	16	17	16	15	12	11	8	13	12	9	9	7	7	7	5	
12	10	13	12	12	12	9	3	3	5	7	6	6	6	5	4	4	2	3	2	4	5	8	
13	19	20	22	24	27	²⁷ 27	³⁰ 30	²² 22	⁶ 26	5	5	4	9	16	19	16	19	17	13	9	13	12	
14	18	17	9	7	10	11	11	14	15	12	8	7	6	8	8	6	7	4	2	5	5	4	
15	4	8	9	12	13	9	11	10	12	12	8	9	8	10	9	11	12	15	11	11	12	12	
16	11	13	9	10	13	14	15	19	20	19	20	22	21	22	21	22	21	18	19	18	17	16	
17	7	4	10	18	20	16	14	23	25	³² 28	³¹ 27	³⁰ 25	³² 26	22	³¹ 27	³¹ 28	25	17	13	14	15	18	
18	³⁸ 33	³⁷ 36	³⁶ 32	20	21	22	16	15	14	13	13	13	12	17	17	15	16	13	10	5	7	10	
19	17	15	12	13	12	10	12	11	13	8	10	11	11	8	9	9	9	8	7	10	11	10	
20	11	11	10	11	11	10	11	11	10	7	5	6	9	11	10	14	17	15	12	11	9	10	
21	9	6	6	6	4	7	9	12	20	24	24	³⁵ 28	³⁰ 27	³¹ 25	22	19	20	18	13	13	13	11	
22	6	2	3	7	11	12	10	8	4	10	12	11	9	5	3	4	9	12	16	18	17	15	
23	11	7	8	7	9	10	10	10	6	4	3	5	4	6	12	6	5	11	25	22	18	13	
24	10	14	13	7	9	16	20	19	16	11	9	8	10	11	17	17	14	15	19	³⁷ 24	³⁷ 30	³⁷ 37	
25	18	14	12	12	15	14	10	10	9	13	19	22	22	22	22	19	19	19	21	21	20	20	
26	19	12	9	4	5	9	15	17	16	16	17	14	16	16	11	11	13	9	9	8	6	6	
27	10	12	12	11	12	11	7	7	9	10	11	13	13	9	7	6	6	6	6	6	11	11	
28	9	9	10	9	8	9	8	11	11	13	15	12	12	14	15	17	15	19	17	19	18	14	
29	15	13	11	12	9	7	7	6	8	10	9	8	11	11	10	11	9	4	9	15	13	11	
30	2	4	5	4	4	8	8	9	7	8	6	4	5	3	4	8	17	16	15	16	18	21	
31																							

Sums.
Means.

*Fifty estimated.

Italic figures indicate the Maximum Wind Velocities at the rate of 30 miles, or more, per hour, which continued for 5 minutes.

Prepared by Average hourly velocity.....



582

EXHIBIT 43.

Gov. Record (Washington).

Hs.

United States of America,

Department of Agriculture.

Washington, D. C., January 28, 1915.

Pursuant to Section 882 of the Revised Statutes, I hereby certify that it appears from the records of the U. S. Weather Bureau, Washington, D. C., that the attached statement showing weather conditions as to wind velocity, etc., at Duluth, Minn., for the dates specified, is a true copy of the original records on file in the Weather Bureau.

C. F. MARVIN,
Chief U. S. Weather Bureau.

Be it known that C. F. Marvin, who signed the foregoing certificate, is the.....Chief of the U. S. Weather Bureau, and that to his attestation as such full faith and credit are and ought to be given.

In witness whereof I, D. F. Houston, Secretary of Agriculture, have hereunto caused the seal of the Department of Agriculture to be affixed and my name subscribed by the Chief Clerk of the said Department, at the City of Washington, this twenty-eighth day of January, 1915.

[SEAL.]

D. F. HOUSTON,
Secretary of Agriculture.

1000-12, 1914.

Lewis, Adler & Laws, Philadelphia.

(Here follows Exhibit No. 43, Government record, marked pages 583 to 604.)

605-6

EXHIBIT Y.

Average Wind Direction.

Claimant's Exhibit "Y."

U. S. Department of Agriculture.

Central Office of the Weather Bureau,

Washington, D. C.

Climatological Division.

Hourly Wind Direction and Velocity at Duluth, Year 1914.

Hour Ending:	April 27th.	April 28th.
1 a. m.	N. E. 12	N. E. 24
2 a. m.	N. E. 13	N. E. 29
3 a. m.	N. E. 14	N. E. 34
4 a. m.	N. E. 13	N. E. 33
5 a. m.	N. E. 14	N. E. 38
6 a. m.	N. E. 14	N. E. 40
7 a. m.	N. E. 13	N. E. 46
8 a. m.	N. E. 12	N. E. 41
9 a. m.	N. E. 13	N. E. 40
10 a. m.	N. E. 17	N. E. 40
11 a. m.	N. E. 17	N. E. 40
noon.	N. E. 16	N. E. 40
1 p. m.	N. E. 18	N. E. 41
2 p. m.	N. E. 19	N. E. 41
3 p. m.	N. E. 23	N. E. 43
4 p. m.	N. E. 23	N. E. 37
5 p. m.	N. E. 23	N. E. 37
6 p. m.	N. E. 24	N. E. 37
7 p. m.	N. E. 27	N. E. 38
8 p. m.	N. E. 29	N. E. 36
9 p. m.	N. E. 35	N. E. 29
10 p. m.	N. E. 32	N. E. 28
11 p. m.	N. E. 29	N. E. 26
midn.	N. E. 26	N. E. 24

607-8 Proceedings in the United States Circuit Court of Appeals
for the Sixth Circuit.

Appearance of Counsel.

(Filed August 28, 1916.)

William C. Cochran, Clerk of said Court:

Please enter my appearance as counsel for the Appellant.

MILLER, SMITH, CANFIELD,
PADDOCK & PERRY.

Cause Argued.

(May 16, 1917.)

Before Warrington, Mack, and Denison, C. JJ.

This cause is argued in part by Mr. Frank S. Masten for the
Appellant and is continued until tomorrow for further argument.

609-10 *Cause Further Argued and Submitted.*

(May 17, 1917.)

Before Warrington, Mack, and Denison, C. JJ.

This cause is further argued by Mr. Frank S. Masten and Mr.
Charles R. Hickox for the Appellant and by Francis S. Laws and
Mr. Sherwin A. Hill for the Appellee and is submitted to the court.

Decree.

(Filed June 30, 1917.)

Appeal from the District Court of the United States for the Eastern
District of Michigan.

This cause came on to be heard on the transcript of the record from
the District Court of the United States for the Eastern District of
Michigan, and was argued by counsel.

On Consideration Whereof, It is now here ordered, adjudged and
decreed by this Court that the decree of the said District Court in this
cause be and the same is hereby affirmed with costs.

611-12

Opinion.

(Filed June 30, 1917.)

613

Filed Jun- 30, 1917. Wm. C. Cochran, Clerk.

United States Circuit Court of Appeals, Sixth Circuit.

No. 2967.

In the Matter of the Petition of CAPITOL TRANSPORTATION COMPANY,
as Owner of the Steamer "Benjamin Noble," for Limitation of
Liability, Appellant,

vs.

CAMBRIA STEEL COMPANY, Claimant, Appellee.

Appeal from the District Court of the United States for the Eastern
District of Michigan.

Submitted May 17, 1917.

Decided June 30, 1917.

Before Warrington, Mack and Denison, Circuit Judges.

WARRINGTON, *Circuit Judge*:

The steamer Benjamin Noble and her entire crew and cargo were lost on Lake Superior in April, 1914. The Cambria Steel Company, as owner of the cargo, filed two libels in personam against the owner of the Noble, the Capitol Transportation Company, one in the District Court of the United States for the Eastern District of Pennsylvania, and the other in the District Court of the United States for the Northern District of Illinois, to recover the value of the cargo so lost. Later the Capitol Transportation Company, appellant herein, filed libel and petition in the court below, praying limitation of liability, and claiming under admiralty rule 56 the right to contest its liability to any extent whatever. Appellant, in lieu of appraisal and bond, elected to transfer all that was recovered from the Noble, to wit, a life boat and spare wheel, and its interest in the wreck if the same should be salvaged. Monition having issued, the Cambria Steel Company, appellee herein, filed its claim against appellant for loss of cargo, consisting of 2951-840/2240ths tons of steel rails there stated to
614 be of the value of \$96,418.85. On the same day appellee filed answer setting up among other things: specific denial that appellant is entitled to limitation of liability; a contract whereby appellant agreed to transport and carry for appellee in one shipment a cargo of 3,000 tons of steel rails from the port of Conneaut, Ohio, to the port of Superior, Wisconsin, at 80 cents per gross ton, the dangers of navigation, fire and collision excepted; and allegations to

the effect that appellant with knowledge of the load the steamship could safely carry, but without any knowledge in that behalf on the part of appellee, offered to furnish the steamer Noble for the service in contemplation, and upon its own responsibility afterwards loaded the steamer with the tonnage of rails lost, as stated, and thereupon undertook to carry the rails safely from the initial to the destined port mentioned. Upon trial, in which nearly all the witnesses testified before the court, decree was entered denying to appellant its claim to limitation of liability, and allowing recovery in favor of appellee and against appellant for the stipulated value of and damage to the cargo in the sum of \$94,199.51, with interest at 5% per annum from April 28, 1914. The case is reported under the title of the Benjamin Noble, 232 Fed. 382. The decree is based on a finding that from the beginning of the voyage and within the knowledge of the owner the ship was unseaworthy in the sense that she was overloaded.

We see no sufficient reason to disturb this finding unless, as counsel claim, it was reached through erroneous application of the law. We cannot think it necessary to refer to all the criticisms of counsel; but we may, for illustration, refer to some:

(1) It is said that the trial court held the Noble "overloaded on a basis unknown in law." The accepted definition of seaworthiness is whether the vessel is "reasonably fit to carry the cargo which she has undertaken to transport" (The Southwark, 191 U. S. 1, 9); and this test of course is one of fact, not of law. Seaworthiness is a relative term (The Thames, 61 Fed. 1014, 1022—C. C. A. 4), and usually involves an inquiry into the condition or capacity of the vessel, in connection with the nature or tonnage of the cargo; as, for instance, it has been held that the condition of a vessel made it unseaworthy for carrying meat (The Southwark, supra); likewise as to the carriage of flour (The Thames, supra); as to the carriage of grain (The Fitzgerald, 212 Fed. 678, 683—C. C. A. 6); and as to 615 the carriage of asphalt (Dene Shipping Co. v. Tweedie Trading Co., 143 Fed. 854, 856—C. C. A. 2). This is true also of a vessel which is improperly ballasted with reference to the load it carries (The Whittlieburn, 89 Fed. 526, 528, D. C., and Sumner v. Caswell, 20 Fed. 249, 252, 253, D. C., decisions by Judge Addison Brown); so as respects an improper distribution or loading of the cargo (The Oneida, 128 Fed. 687, 689—C. C. A. 2; The G. B. Boren, 132 Fed. 887, 888, D. C.; The William Power, 131 Fed. 136-7, D. C.), or overloading a particular part of a vessel (The Kate, 91 Fed. 679, 680, per Judge Addison Brown). It must follow, if it is not obvious, that the capacity of a vessel and the tonnage of its cargo are likewise vitally related as respects the fact of unseaworthiness. In Cincinnati Firemen's Mutual Ins. Co. v. May, 20 Ohio Rep. 212, 226, Chief Justice Hitchcock said: "That the overloading of a vessel renders her unseaworthy, there can be no doubt." This is in accord with the rule laid down by Earle, C. J., in Foley v. Tabor, 2 F. & F. 663, 664-5 671-2; by the Lord Chancellor, in Steel v. State Line Steamship Co., 3 App. Cas. 72, 77, and by Lord Wensleydale in 14 Moo. P. C. C. 471, 492, 497; 2 Arnould on Marine Ins. (7th ed.), p.

814, sec. 717; Parsons on Maritime Law, p. 137; and no decision to the contrary has come to our attention; indeed, the same rule is clearly implied in the provision of the Harter Act which requires the owner to make his vessel "seaworthy and capable of performing her intended voyage" (27 Stat. 445, sec. 2). It results that seaworthiness must be tested by the facts and circumstances of each particular case (see in addition to cases above cited *Ins. Nav. Co. v. Farr & Bailey Mfg. Co.*, 181 U. S. 218, 221); and the advantages derived in the court below through observation of the witnesses cannot be overlooked.

(2) Concerning the finding of unseaworthiness, it is objected that the trial court erroneously placed upon appellant the burden of proving that the ship was seaworthy with respect to her load; and it is said that this is so whether appellant be treated as a common carrier or as a private carrier. Counsel admit that the objection is of no great consequence in view of the fact that the record has been made; and as we interpret the record the burden was not in fact placed on appellant. True, in the course of the opinion, the trial judge stated that "while the law places the burden of proving seaworthiness upon the petitioner in a case of this kind," yet he also stated that he "directed the claimant (appellee) to put in its full case, that then the petitioners (appellant) put in their case, and that then the
616 claimant put in its rebuttal, and that course was pursued" (232 Fed. at 389); and it conclusively appears that the objection is immaterial, since the court further found (390): "But there can be no question of doubt in this case, as the shipper by direct and convincing evidence has proved the unseaworthiness of the carrier." Apart from this, and upon the theory that the *Noble* was a common carrier, it was "incumbent upon the shipowner (appellant) to prove that the vessel was seaworthy at the time of beginning the voyage, or that due diligence had been used to make her so" (*The Wilderoft*, 201 U. S. 378, 386); and even if in considering the testimony the trial judge had been in doubt as to the ship's seaworthiness, the doubt should have been resolved in favor of the shipper, for the evidence clearly shows that appellee did not use due diligence to furnish a seaworthy vessel with respect to the load attempted to be carried (*The Wilderoft*, *supra*, at 389). The fact that the bill of lading contained a provision excepting "dangers of navigation, fire and collision" is not important. As Mr. Justice Day said in *The Southwark*, *supra* (191 U. S. at 16, 17), "To permit the stipulations of this bill of lading to cut down the statutory requirements of sec. 2 of the Harter Act would be to allow the parties to enforce a contract in violation of the positive terms of the statute." It is however urged that the *Noble* was not a common carrier, but a private carrier, since the whole cargo belonged to appellee and the boat was not running on regular routes nor held out as a common carrier; and consequently that she was not subject to the rule pointed out touching the burden of proof. Conceding, though it is not necessary to decide, that the *Noble* was a private carrier, the position of appellant is not changed; for, as we have seen, the burden of proof was not cast upon appellant. Furthermore, we see no reason for distinction between a private carrier and a

common carrier as respects the question *or* the proofs as to seaworthiness, since the obligation of each to furnish a seaworthy boat is the same. *Sumner v. Caswell*, supra—20 Fed. at 251, 252; *The Planter*, 19 Fed. Cas. No. 11207a, 807, 808, C. C. per Circuit Judge (afterwards Mr. Justice) Woods; *The Royal Sceptre*, 187 Fed. 224, 227, D. C.

(3) It is contended that if the vessel was lost through overloading to the extent of unseaworthiness, the overloading was brought about by the master without appellant's privity or knowledge and so
617 furnishes no reason for denying limitation of liability. We must regard this contention as ruled by the decision of this court in *Great Lakes Towing Co. v. Transp. Co.*, 155 Fed. 11. It is a mistake to say that the master alone was responsible for the overloading. The corporation itself, through John A. Francombe, was cognizant of the overloading and in effect brought it about. It is stated in appellant's brief and without apparent contradiction that appellant's "only vessel property" was the steamer *Noble*; and this, with the further fact that appellant was in possession of the insurance proceeds, was conceded at the oral argument. These facts should be borne in mind in determining the relations between the appellant company and Francombe. It is clearly to be inferred from the evidence that Francombe was the sole manager of the steamer *Noble*; that appellant had employed him in that capacity; that he was invested with and he exercised the power of the corporation in selecting and employing the chief officers, such as the master and engineer, of the vessel and in determining what contractual services the vessel should engage in; that he was held out by the company and was recognized by persons, such as brokers, dealing in respect of the ship and her services, as the person ultimately entitled in such matters to represent and bind the corporation. The initial arrangement for the carriage of the steel rails in question was held in abeyance until it received his ultimate approval; and even the master would not complete the loading of the rails until he first obtained the sanction and direction of Francombe. In short, it is not shown that final authority in the respects mentioned resided in any person except Francombe; and he may rightfully be treated as in fact the company's manager. Since the board of directors of the corporation must be presumed to have exercised a supervision over its business, the board is to be charged with knowledge of the extent of the power usually exercised by its ship manager and held to have acquiesced in his possession of such authority, even though it had not been given in express terms when he was employed as manager of the vessel. *Sun Printing and Publishing Ass'n v. Moore*, 183 U. S. 642, 650-1; *Walker v. Detroit Transit Ry. Co.*, 47 Mich. 338, 350. The language of Judge Severens in the *Great Lakes Towing* case, supra, at p. 21, would therefore seem to be peculiarly apposite:

"The Mills Transportation Company, being a corporation could act only through some agency. McMorran was the manager, and was vested with authority to make such contracts as this
618 in behalf of the owner of the vessel, and the contract was the personal contract of the corporation, not in consequence

of any principle peculiar to the maritime law, but by virtue of the common-law rules of agency."

Francombe sanctioned and in effect made the verbal contract of affreightment out of which the present controversy grew; and the contractual obligation so created was the personal contract of appellant. In our view of the evidence Francombe's knowledge that the steamer was overloaded is too clear for argument. It inevitably follows that this overloading took place with the privity and knowledge of appellant.

It is insisted, however, that even this is not enough to justify denial of limitation. Admittedly this view is opposed to the decision of this court in the Great Lakes Towing case. This is true also of the decision in *The Republic*, 61 Fed. 109, 113—C. C. A. 2; in *The Annie Faxton*, 75 Fed. 312, 313—C. C. A. 9; in *Benner Line v. Pendleton*, 217 Fed. 497, 506—C. C. A. 2; and in *The Julia Luckenbach*, 235 Fed. 388, 397—C. C. A. 2, reversing decision below; also in *Grokey v. Fort*, 44 Fed. 364, 365, D. C.; *Rudolph v. Brown*, 137 Fed. 106, 108-9, D. C.; and the same rule is recognized, though perhaps this was not necessary, in the decision of *Richardson v. Harmon*, 222 U. S. 96, 103 to 106, and in *Butler v. Boston Steamship Co.*, 130 U. S. 527, 553 et seq. However, it is said that these decisions are erroneous as regards the question of limitation, and consequently that the decision in the Great Lakes Towing case should be reconsidered. The theory of this feature of the argument is that sec. 18 of the Act of 1884 (23 Stat. 57) operated to repeal and supplant sec. 3 of the Act of 1851 limiting the liability of shipowners (9 Stat. 635; Rev. Stat., sec. 4283); in other words, that the purpose of sec. 18 was at least to eliminate from old sec. 3 the "privity or knowledge" clause. The same contention was made in this court in support of a petition for rehearing in the Great Lakes Towing case and upon substantially the same argument as the one presented here; but rehearing was denied. It is said that this question is pending in the Supreme Court in the case of *Benner Line v. Pendleton*, supra; but we are disposed to follow the decision in the Great Lakes Towing case.

(4) Strenuous objection is made to the trial judge's estimate of the weight that should be accorded to some of the evidence concerning the overloading of the *Nobie*, and of the credibility of some of the witnesses upon that subject and upon still other matters 619-20 involved in the controversy. We need not recount all the objections. Counsel on both sides were alert and persistent in bringing out all facts and circumstances of seeming relevancy to the issues, and the court indulged counsel in this course to a liberal degree. At the close of the trial and when the demeanor of the witnesses and their testimony were fresh in mind, the judge delivered an opinion which shows that he had a full appreciation of the testimony. This opinion was subsequently rewritten and, apart from the introduction of citations, without change of any importance. In our view of the evidence we cannot accept the claims of appellant that some of the conclusions of fact reached by the trial judge are unsupported by the testimony, much less that they are

opposed to the testimony. This would be to accept part of the testimony, not the whole of it; it would be to substitute our view of credibility derived from the record for the impressions received by the judge who actually saw the witnesses and heard them testify. We are unanimous in the belief that no prejudicial error is shown as respects any of the conclusions of fact or law. The present opinion has been prepared in deference to the earnest contentions of counsel and in an effort to meet some of the more prominent contentions, rather than in the belief that a written opinion here is necessary. The decree must be affirmed.

621 United States Circuit Court of Appeals for the Sixth Circuit.

I, William C. Cochran, Clerk of the United States Circuit Court of Appeals for the Sixth Circuit, do hereby certify that the foregoing is a true and correct copy of record and proceedings in the case of The Capitol Transportation Co., etc. vs. Cambria Steel Company, No. 2967, as the same remains upon the files and records of said United States Circuit Court of Appeals for the Sixth Circuit, and of the whole thereof.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said Court, at the City of Cincinnati, Ohio, this 18th day of July, A. D. 1917.

[Seal United States Circuit Court of Appeals, Sixth Circuit.]

WILLIAM C. COCHRAN,
*Clerk of the United States Circuit Court of Appeals
for the Sixth Circuit.*

622 UNITED STATES OF AMERICA, ss:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Sixth Circuit, Greeting:

Being informed that there is now pending before you a suit in which Capitol Transportation Company, as owner of the steamer "Benjamin Noble," is appellant, and Cambria Steel Company, Claimant, is appellee, No. 2967, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the District Court of the United States for the Eastern District of Michigan, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court

623 of the United States, Do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the eighteenth day of October, in the year of our Lord one thousand nine hundred and seventeen.

JAMES D. MAHER,

Clerk of the Supreme Court of the United States.

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SIXTH CIRCUIT, ss:

I, William C. Cochran, Clerk of the United States Circuit Court of Appeals for the Sixth Circuit, do hereby certify that the transcript of the record of the proceedings of this court in the within entitled case heretofore certified by me for filing in the Supreme Court of the United States was correct and complete as the same then appeared in this court.

In pursuance of the command of the foregoing writ of certiorari I now hereby certify that on the 23rd day of November, A. D., 1917, there was filed in my office a stipulation in the above entitled case in the following words, to-wit:

In the United States Circuit Court of Appeals for the Sixth Circuit,

No. —.

In the Matter of the Petition of CAPITOL TRANSPORTATION COMPANY
as Owner of the Steamer "Benjamin Noble," for Limitation of
Liability, Appellant,

VS.

CAMBRIA STEEL COMPANY, Appellee.

It is hereby stipulated that the certified copy of the transcript of record, filed in the Supreme Court with the application for writ of certiorari in this cause, together with the exhibits mentioned in the stipulation on page 504 of said record, and which shall be forwarded by the Clerk of the United States Circuit Court of Appeals to the Supreme Court and may be used in argument by either party, shall stand as the return to the writ of certiorari granted by said court and dated the 18th day of October, in the year of our Lord one thousand nine hundred and seventeen.

It is further stipulated that the congressional record introduced in evidence in the District Court may also be used in argument in the Supreme Court.

MILLER, SMITH, CANFIELD, PAD-
DOCK & PERRY,

*Proctors for Capitol Transportation
Company, Appellant.*

LEWIS, ADLER & LAWS,
WARREN, CADY, LADD & HILL,

*Proctors for Cambria Steel
Company, Appellee.*

I further certify that the above is a true and correct copy of said stipulation and of the whole thereof. Witness my official seal, signature and the seal of said Circuit Court of Appeals at the city of Cincinnati in said circuit this 23rd day of November, A. D. 1917.

[Seal United States Circuit Court of Appeals, Sixth Circuit.]

WILLIAM C. COCHRAN,

*Clerk United States Circuit Court of Appeals
for the Sixth Circuit,*

By ARTHUR B. MUSSMAN, *Deputy.*

Dated November 21, 1917.

Filed Nov. 23, 1917. Wm. C. Cochran, Clerk.

624 [Endorsed:] File No. 26,067. Supreme Court of the United States, No. 600, October Term, 1917. Capitol Transportation Company vs. Cambria Steel Company. Writ of Certiorari.

625 Endorsed: File No. 26,067. Supreme Court U. S., October Term, 1917. Term No. 600. Capitol Transportation Company, Petitioner, vs. Cambria Steel Company. Writ of certiorari and return. Filed November 26, 1917.



No. 6-231

FILED

JUL 28 1917

JAMES D. MAHER
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES.

October Term 1917.

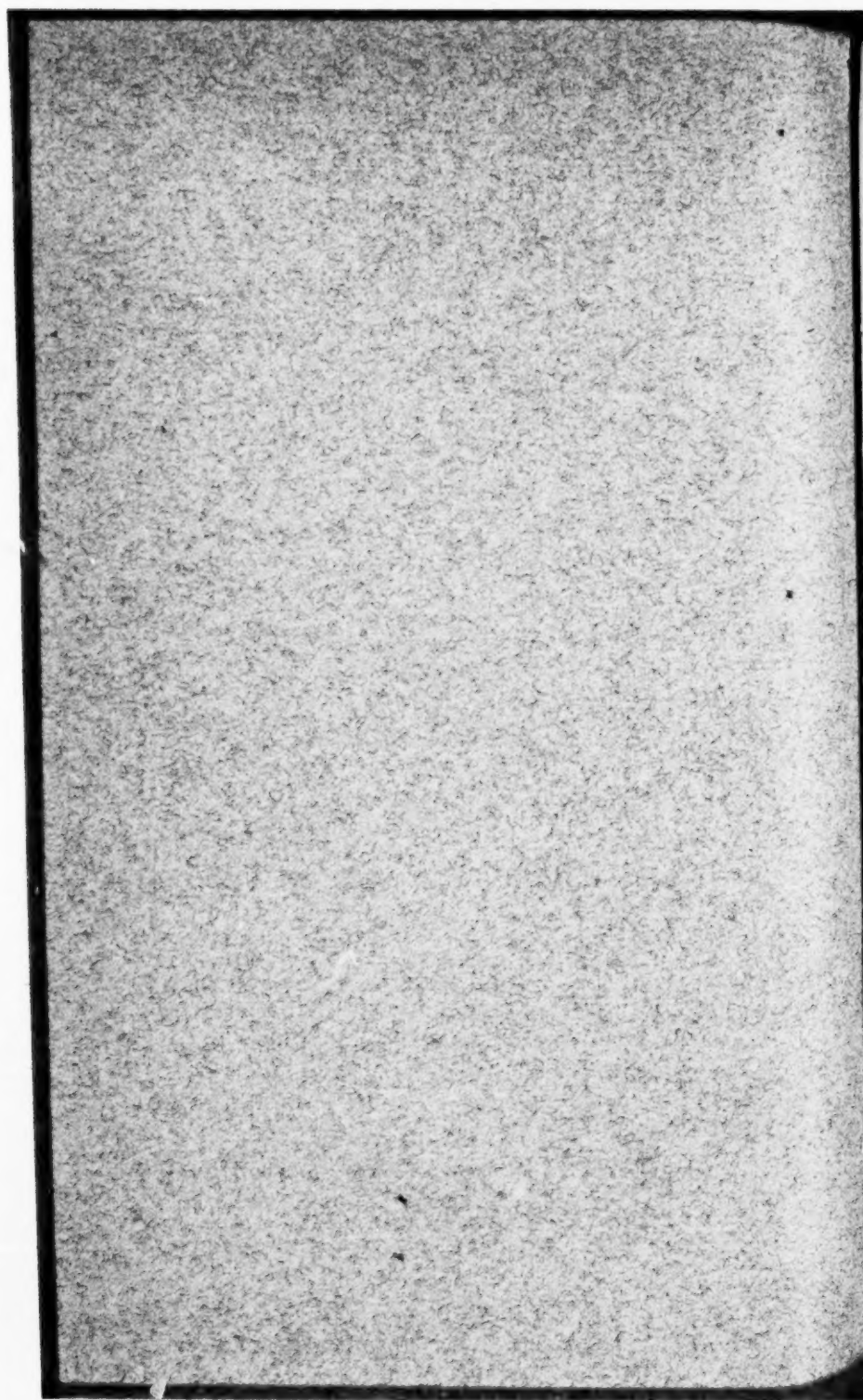
CAPITOL TRANSPORTATION COMPANY,	}	Petitioner,
vs.		
CAMBRIA STEEL COMPANY,		Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE SIXTH CIR-
CUIT, AND BRIEF.

FRANK S. MASTEN,
GEORGE L. CANFIELD,
Counsel for Petitioner.

MILLER, SMITH, CANFIELD, PADDOCK & PERBY,
Detroit, Michigan.
HOLDING, MASTEN, DUNOAN & LECKIE,
Cleveland, Ohio.
Counsel.

DETROIT:
CONWAY BRIEF CO., 143-153 LAFAYETTE BOULEVARD
1917



**IN THE
SUPREME COURT OF THE UNITED STATES.
October Term 1917.**

CAPITOL TRANSPORTATION COMPANY,	}	
	}	Petitioner,
vs.		
CAMBRIA STEEL COMPANY,	}	
	}	Respondent.

To the Honorable, The Chief Justice and to the
Associate Justices of the Supreme Court
of the United States:

Capitol Transportation Company, Petitioner, respectfully shows:

First: Conflict in decision exists between the First and Sixth Circuit Courts of Appeal as to the interpretation and application of federal statutes governing limitation of liability of ship owners, the matter being one of public importance as well, as it concerns all owners of vessels and persons traveling or shipping goods thereon, whether the vessels are engaged in the coastwise or foreign trade of the United States, and whether owned by citizens or foreigners. The decision in the particular case was rendered June 30, 1917. In addition to such conflict, the case presents a further question of general public importance.

Sec. 3, Act of March 3, 1851 (9 St. L. 635, Sec. 4283 R. S.), "An Act to Limit the Liability of Ship Owners and for other purposes", provides:

"The liability of the owner of any vessel for any embezzlement, loss or destruction, by any person of any property, goods, or merchandise, shipped or put on board of such vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred, *without the privity or knowledge of such owner or owners*, shall in no case exceed the amount or value of the interest of such owner in such vessel, and her freight then pending". (Emphasis ours.)

Sec. 18, Act of June 26, 1884, (23 St. L. 57), "An Act to remove certain burdens on the American Foreign Carrying Trade", etc., provides:

"The individual liability of a shipowner, shall be limited to the proportion of *any or all debts and liabilities* that his individual share of the vessel bears to the whole; and the aggregate liabilities of all the owners of a vessel on account of the same shall not exceed the value of such vessels (sic) and freight pending.* * * (Emphasis ours.)

Sec. 30 provides:

"All laws and parts of laws in conflict with this act are hereby repealed and this act shall take effect and be in force on and after July 1, 1884".

As enacted, the right so given was limited to "foreign carrying trade, but Sec. 4 of the Act of June 19, 1886 (Sec. 4289 R. S.) extends this right to "all vessels used on lakes or rivers, in inland navigation, including canal boats, barges and lighters".

Petitioner, a Michigan corporation, sole owner of the Steamer Benjamin Noble, an American merchant vessel employed on the Great Lakes, has been denied the benefit of limitation and decreed to pay \$94,199.51 with interest.

Second: The Noble, her cargo and entire crew, were lost in a storm on Lake Superior in April, 1914. Petition for limitation of liability was filed in the Eastern District of Michigan and the remnants of the vessel transferred to a Trustee. Petitioner averred that the vessel was seaworthy and was lost by sea peril; and that, if unseaworthy at the beginning of the voyage, it was due to an act of the master of the ship, and limitation should be allowed.

Cambria Steel Company, sole owner of cargo, filed claim, averring the vessel was overloaded to the extent of being unseaworthy, and that the contract for the transportation of the particular cargo was the personal contract of the corporate owner.

The District Court denied limitation. The Sixth Circuit Court of Appeals affirmed this, saying:

"It is contended that if the vessel was lost through overloading to the extent of unseaworthiness, the overloading was brought about by the master without appellant's privity or knowledge, and so furnishes no reason for denying limitation of liability. We must regard this contention as ruled by the decision of this court in *Great Lakes Towing Co. vs. Transp. Co.*, 155 Fed. 11. It is a mistake to say that the master alone was responsible for the overloading. The corporation itself, through John A. Francombe, was cognizant of the overloading and in effect brought it about. It is stated in appellee's brief and without apparent contradiction that appellant's 'only vessel property' was the steamer Noble; and this, with the further fact that appellant was in possession of the insurance proceeds, was conceded at the oral argument. These facts should be borne in mind in determining the relations between the appellant company and Francombe. It is clearly to be inferred from the evidence that Francombe was the sole *manager of the steamer Noble*; that appellant had employed

him in that capacity; that he was invested with and he exercised the power of the corporation in selecting and employing the chief officers, such as the master and engineer, of the vessel and in determining what contractual services the vessel should engage in; that he was held out by the company and was recognized by persons, such as brokers, dealing in respect of the ship and her services, as the person ultimately entitled in such matters to represent and bind the corporation. The initial arrangement for the carriage of the steel rails in question was held in abeyance until it received his ultimate approval; and even the master would not complete the loading of the rails until he first obtained the sanction and direction of Francombe. In short, it is not shown that final authority in the respects mentioned resided in any person except Francombe; and he may rightfully be treated as in fact the company's manager. *Since the board of directors of the corporation must be presumed to have exercised a supervision over its business, the board is to be charged with knowledge of the extent of the power usually exercised by its ship manager and held to have acquiesced in his possession of such authority, even though it had not been given in express terms when he was employed as manager of the vessel.* *Sun Printing and Publishing Ass'n. vs. Moore*, 183 U. S. 642, 650-1; *Walker vs. Detroit Transit Ry. Co.*, 47 Mich. 338, 350. The language of Judge Severens in the *Great Lakes Towing* case, *supra*, at p. 21, would therefore seem to be peculiarly apposite:

'The Mills Transportation Company, being a corporation, could act only through some agency. McMorran was the manager, and was vested with authority to make such contracts as the, in behalf of the owner of the vessel, and the contract was the personal contract of the corporation, not in consequence of any principle peculiar to the maritime law, but by virtue of the common-law rules of agency.'

Francombe sanctioned and in effect made the verbal contract of affreightment out of which the present controversy grew; and the contractual ob-

ligation so created was the personal contract of appellant. In our view of the evidence Francombe's knowledge that the steamer was overloaded is too clear for argument. It inevitably follows that this overloading took place with the privity and knowledge of appellant.

It is insisted, however, that even this is not enough to justify denial of limitation. Admittedly this view is opposed to the decision of this court in the *Great Lakes Towing* case. This is true also of the decision in *The Republic*, 61 Fed., 109, 113—C. C. A. 2; in *The Annie Faston*, 75 Fed., 312, 313—C. C. A. 9; in *Benner Line vs. Pendleton*, 217 Fed., 497, 506—C. C. A. 2; and in *The Julia Luckenbach*, 235 Fed., 388, 397—C. C. A. 2, reversing decision below; also in *Grokcy vs. Fort*, 44 Fed., 364, 365, D. C.; *Rudolph vs. Brown*, 137 Fed., 106, 108-9, D. C.; and the same rule is recognized, though perhaps this was not necessary, in the decision of *Richardson vs. Harmon*, 222 U. S., 96, 103 to 106, and in *Butler vs. Boston Steamship Co.*, 130 U. S., 527, 553 et seq. However, it is said that these decisions are erroneous as regards the question of limitation, and consequently that the decision in the *Great Lakes Towing* case should be reconsidered. The theory of this feature of the argument is that Sec. 18 of the Act of 1884 (23 Stat. 57) operated to repeal and supplant Sec. 3 of the Act of 1851 limiting the liability of ship owners (9 Stat. 635; Rev. Stat., Sec. 4283); in other words, that the purpose of Sec. 18 was at least to eliminate from old Sec. 3 the 'privity or knowledge' clause. The same contention was made in this court in support of a petition for rehearing in the *Great Lakes Towing* case and upon substantially the same argument as the one presented here; but rehearing was denied. It is said that this question is pending in the Supreme Court in the case of *Benner Line vs. Pendleton*, *supra*; but we are disposed to follow the decision in the *Great Lakes Towing* case."

In the list of authorities mentioned the two most recent, *Benner Line vs. Pendleton*, 217 Fed. 497, and *The Julia Luckenbach*, 235 Fed. 388, are now pending in this Court, certiorari having been granted. The Pendleton case is No. 1041, October Term, 1915; The Luckenbach, No. 743, October Term, 1916. The Sixth Circuit, however, in the present case, the pendency of the Pendleton case here having been called to attention, say that notwithstanding,

"we are disposed to follow the decision in the *Great Lakes Towing case*".

The theory of the decision in the present case is that the Manager of the Noble (Francombe), although not an officer of the Company, either made the initial arrangement "for the carriage of the steel rails in question", or it was held in abeyance until it *received his approval*; that the Board of Directors of the owning company must be charged with the knowledge of the power exercised by the ship's manager, although not expressly given, and, under its previous holding in *Great Lakes Towing Company* (155 Fed., 100), knowledge of the *manager of the ship* must be held to be knowledge of the owning corporation, and that as a corporation must act by an agent, the contract of the agent, if binding on the corporation at common law, is the personal contract of the corporation and not within the right of limitation, and the court emphasizes the fact that the company owned but a single vessel.

The initial agreement for the carriage was made by Mitchell & Co., vessel brokers, Cleveland, Ohio, with M. A. Hanna & Co., Cleveland, Ohio, agent of the Cambria Steel Company. It was verbal, but confirmed in writing and approved by the Manager of the Steamer Noble. It was for the "Steamer Benjamin Noble to load 3000

tons of 33 ft. rails at Conneaut" (531). The usual bill of lading was issued by the master of the Noble for the amount loaded, 2951 tons (510). The decision herein is that the contract of the manager of the ship so made,

"was the personal contract of the corporation not in consequence of any principle of the maritime law, but by virtue of the common law rule of agency" (618).

Third: The First Circuit announce principles diametrically opposed. They say that there can be no distinction between the owner of one vessel with time and opportunity to give it his personal attention and the owner of many vessels, or whether distance, inexperience or sex renders such owner incapable of giving attention. Therefore, says the court, uniformity is established and the spirit of the law fulfilled, when it is held that even

"if the owner is chargeable under the statute with privity and knowledge, who permits a ship to sail from the home port without making provision for inspection of proper fitting away, yet he may rest this duty upon any suitable agent, and when he has done this, he may be relieved under the statute although the agent may be negligent in some particulars." *Quila vs. Rev 56 Fed. 111, 118.*

And further (p. 119):

"Neither can the proposition of the appellant be maintained that the statute does not apply because there was in this case a personal contract on the part of the owners, either express or in the form of an implied warranty, that the vessel was seaworthy. In nearly all instances which the statute expressly enumerates as to those to which the limitation of liability applies, there is necessarily an implied warranty, and frequently an express agreement in the form of a bill of lading; so that, if the contention of the complainant is correct, the wings of the statute would be effectually clipped. That there may be certain contracts, relating not so much to navigation of the ship as to fitting her for sea, by which the owners charge personally their

own credit, and which do not come within the statute, may well be contended, without at all touching the principles here involved." (Emphasis ours.)

The Second Circuit, in *The Loyal*, 204 Fed., 930, 933, said:

"The Courts of Appeal in the First and Sixth Circuits (*Quinlan vs. Peir*, 56 Fed. Rep. 111 and *Great Lakes Towing Co. vs. Mills Transp. Co.*, 155 Fed. Rep. 11) seem not to be in accord as to the interpretation of the section under consideration. The question is a close one. * * * It would seem desirable that some effort should be made to secure a construction of the act by the Supreme Court which will insure future uniformity of decision".

The case of the *Great Lakes Towing Co. vs. Mills Transp. Co.*, 155 Fed., 11, referred to in *The Loyal*, is the case in the Sixth Circuit referred to in the opinion in this case and on which the decision here is based. The Court said (618):

"It is said that this question is pending in the Supreme Court in the case of *Benner Line vs. Pendleton*, *supra*; but we are disposed to follow the decision in the *Great Lakes Towing* case."

Fourth: The conflict between the First and Sixth Circuit Courts of Appeal affects the owner of all vessels or parts of or interests in vessels and of all passengers and shippers of goods, and with the revival of American Shipping, it is of the utmost general public interest and importance, that uniformity of decision should be had as to what claims may or may not be within the right of limitation.

Fifth: The court also held that Sec. 18 of the Act of 1884 (hereinbefore quoted), and Sec. 30 (repealing section), did not have the effect of bringing "*all debts and liabilities*" within the right of limitation, except those "in-

curring previous to the passage of this act," and to "wages due to persons employed by said ship owners," as stated in the Act, but only to such debts and liabilities as were incurred without the "privity or knowledge" of the owner, as provided by Sec. 3 of the Act of 1851.

The case presents these questions:

1.

Is an agreement for carriage of a designated cargo or a charter of a particular ship to carry a particular cargo when made by brokers authorized by an employee of the corporation, who exercised the powers of manager of the ship, the personal contract of the corporation so as to deprive it of its right of limitation under the statute?

2.

Where a vessel is over-loaded by her Master so as to be unseaworthy, and the fact of over-loading is known to an employee of the owner who exercised the powers of manager of the ship, is such privity or knowledge that of the corporate owner so as to deprive it of the right of limitation of liability?

3.

In view of the fact that in Section 18 of the Act of June 26, 1884, the words "incurred without his personal privity or consent" were intentionally and purposely omitted by Congress, and the right of limitation was expressly given to cover "all debts and liabilities," and that Section 30 of the same Act expressly repeals "all laws and parts of laws in conflict" therewith, was not the language of Section 3 of the Act of 1851 repealed so that the limitation of liability now in force under the statute of June 26, 1884, covers all debts and liabilities except for wages, irrespective of any privity or knowledge concerned in the duty or liability?

WHEREFORE your petitioner prays this Honorable Court will cause writ of certiorari to be issued requiring the United States Circuit Court of Appeals for the Sixth Circuit to certify the whole of the record herein, being No. 2967, decided June 30, 1917, so that this Honorable Court may act thereon as right and justice may require.

Frank S. Masten,

Geo. L. Canfield,

Advocates.

Messrs. Miller, Smith, Canfield, Paddock & Perry,

Detroit, Michigan.

Messrs. Holding, Masten, Duncan & Leckie,

Cleveland, Ohio.

Of Counsel.

Michigan
State of *Ohio*,
Wayne } ss.
Cuyahoga County,

Geo. L. Canfield, being first duly sworn, says that he is one of proctors for petitioner, Capitol Transportation Company; that he has read the foregoing petition and knows the contents thereof and that the same is true to the best of his knowledge and belief.

Geo. L. Canfield
.....

Sworn in my presence and sworn to before me this. *26* ^{*16*}

day of July, 1917.

(*Seal*) *My Comm. expires*
July 29 - 1919

Hubert R. Rodgers
.....
Notary Public.

I hereby certify that I have examined the foregoing petition, and in my opinion the conflict in decision exists, and the question is of such great importance to all owners of vessels and shippers of goods by water and to the general public, that the prayer of the petition should receive favorable consideration.

Lacey T. Miller
.....
Counsel.

BRIEF IN SUPPORT.

Point I.

In this case, a corporate ship owner claiming the benefit of the statutes enacted to remove burdens from ship owners and to foster the merchant marine, is condemned to pay substantially \$100,000 in a proceeding which, if the action had been brought in the First Circuit, its liability would have been limited to "the value of such vessel and freight pending."

This court has emphasized the necessity of uniformity in matters affecting maritime and commercial law; and, also, in speaking of the particular statutes involved, announced the necessity of giving them a liberal construction. In

Providence & N. Y. S. S. Co., vs. Hill Mfg. Co.,
109 U. S., 578, 588,

this court said:

"In these provisions of the statute we have sketched in outline a scheme of laws and regulations for the benefit of the shipping interest, the value and importance of which to our maritime commerce can hardly be estimated. Nevertheless, the practical value of the law will largely depend on the manner in which it is administered. *If the courts having the execution of it administer it in a spirit of fairness, with the view of giving to ship owners the full benefit of the immunities intended to be secured by it, the encouragement it will afford to commercial operations (as before stated) will be of the last importance; but if it is administered with a tight and grudging hand, construing every*

Point II.

IN ADDITION TO THE CONFLICT IN DECISION, THERE IS AN ADDITIONAL REASON IN THIS CASE FOR THE GRANTING OF THE WRIT, AND THAT IS AS TO THE PROPER CONSTRUCTION OF SEC. 18 OF THE ACT OF 1884 AS RELATED TO SEC. 3 OF THE ACT OF 1851, BOTH SET OUT IN THE PETITION.

We think it is proper to look to the Congressional proceeding (committee action), when a statute is fairly open to more than one construction, to ascertain the true purpose and intent which should control if the language employed admits:

“We are seeking to ascertain the meaning which the Congress of the United States attached to a certain form of words; and if that body had, before the use of the words in the two statutes which we are construing, made any public and official declaration of the sense in which they used them, both the grantees in these later statutes, and this court, must be bound by that declaration.”

Lake Superior & M. R. R. Co. vs. U. S., 93 U. S., p. 459.

And in an earlier case, when a revenue statute was under consideration, the court examined the Globe Congressional Record of the 41st Congress, and found that certain words,—“for and during the year 1871,” were not included in the original bill, nor any corresponding words; that the Senate had amended the particular section by inserting the words,—“during the years 1871 and 1872.”

The House disagreed with this, a conference committee was appointed, and the chairman of the House Committee reported "that the House receded from their disagreement" to the Senate amendment, and agreed to the same as follows: "for and during the year 1871," and in that form it became a law.

There were some other phrases that went through various changes, and the court said:

"Under these circumstances, we are compelled to ascertain the legislative intention by a recurrence to the mode in which the embarrassing words were introduced, as shown by the journal and records, and by giving such construction to the statute as we believe will carry out the intentions of Congress."

Blake vs. National Bank, 23 Wall., 307-17-18-19.

It appears from the Congressional Record, page 3958, May 8, 1884, that the Senate in Committee of the whole resumed consideration of the bill (S. 1448) to remove certain burdens on the American marine and encourage the American foreign carrying trade and for other purposes, section by section, and that Senator Frye moved to amend Sec. 18 (which then read as now) by inserting in the first line of the section, after the word "shipowner," the words "*incurred without his personal consent or privity.*" (Cong. Rec., p. 3970, Vol. 15, part 1, 48 Cong., 1st Sec.):

"Mr. Hoar: How will it read then?

The Chief Clerk: That the individual liability of a shipowner, incurred without his personal consent or privity, shall be limited to the proportion of any or all debts and liabilities that his individual share of the vessel bears to the whole."

That Senator Miller (New York) then said (p. 3971):

"That is a remarkable change. As I understand the sentiment of the committee, it was really to make the ownership in all seagoing vessels a limited lia-

bility company, in which every individual was liable for only his share. That was notice to the whole world that nothing but the ship was holden. Now you are going to bring in a clause which would lead to interminable litigation, for some of the owners of a ship will be engaged in the management, they will know in regard to the affairs, and they will be held personally liable for everything, while other owners not immediately connected with the management will escape. The burden will all fall on one or two men if there is any burden.

It seems to me that in order to encourage the investment of capital in ship-owning we have to do substantially this: We have to make each ship company a limited liability company, and that is notice to everybody. If that is understood to be our law, everybody who trusts a ship does it with full knowledge that there is nothing back of it save the ship itself. Therefore no injustice will be done to any one. But if the amendment of the Senator from Maine prevails there will be two classes of owners in ships—one class, who will have control of the management, will be responsible for everything; and the other class will then take the position of silent partner, and will not be responsible."

The Record also shows, page 3973, that Sec. 18, with the amendment proposed by Senator Frye, was concurred in by the Senate, and that the bill with Sec. 18 so amended went back to the House, which, on May 20, 1884, *resolved not to concur in the amendment of the Senate*. It further shows that, subsequently, after proceedings in joint conference committee, on June 21 (Rec., 5440, Vol. 15, part 5, 48 Cong. 1st Sec.), Senator Frye, a member of the committee, reported to the Senate an adjustment of the difference whereby this amendment should be rejected, viz.:

"That the House recede from its disagreement to so much of the amendment 4 as proposes a new section numbered 18, and agree to said section as proposed by the Senate, *with an amendment striking out the words 'incurred without his personal*

privity or consent in the first and second lines, and the Senate agrees to the same."

This report was concurred in and adopted (Rec., p. 5440). On June 21 (Rec., 5452) similar action was had by the House and the bill was enacted by Congress after striking out the words "*incurred without his personal privity or consent.*"

It thus appears that Congress struck out words of equivalent import to "privity or knowledge," deliberately.

A comparison of Sec. 3, Act of 1851, with Sec. 18, Act of 1884, set out in the petition, will show that it was limited to particular acts and losses arising *ex delicto*, occurring without "privity or knowledge," and that it left individual owners liable *in solido*, while Sec. 18 allows the individual owner to segregate his proportionate share of the value of the ship and freight pending, and brings "all debts and liabilities," except seamen's wages and liabilities incurred before the passage of the act. *There is no other limitation.*

Everything contained in Sec. 3 is supplanted by the provisions of Sec. 18, with the exception of the single phrase "without the privity or knowledge of such owner or owners."

The Congressional proceedings, as evidenced by formal action, not the mere remarks of members, show that the qualification contained in Sec. 3 of the Act of 1851 that acts within the privity or knowledge of the owner were not within the right, was considered and deliberately omitted from Section 18, and it is the contention of your petitioner that this having been the clear *intent* of Congress in 1884, it is controlling.

As held in *Cary vs. Donahue*, 240 U. S., 430, in a bankruptcy matter:

"The legislative history of the amendment of February 5, 1903, shows that Congress by the final omission of the provision in regard to possession, originally included in the bill as passed the House of Representatives but struck out in the Senate, deliberately refused to make such conformity; and the courts cannot supply by construction that which Congress has clearly shown its intention to omit." (Emphasis ours).

It is true that Sec. 18 does not contain in itself any repealing language, but Sec. 18 was but *one* section in an act of some thirty sections, all for the purpose of removing burdens from vessel owners and fostering shipping, and the 30th section expressly says: "All laws and parts of laws in conflict with *this act* are hereby repealed."

Since the passage of this act, courts considering it have treated the section as if it were an act *by itself* rather than a section of a general act, and have assumed that as the *section itself* did not purport to repeal any pre-existing law, it must be held to be *in pari materia* with the act of 1851. It was so held in *The Republic*, 61 Fed., 109, 113, which is the case followed in all of the subsequent decisions, and in no case that we are aware of has the effect of the repealing clause of the act of which Sec. 18 is a part, received any consideration. As we have shown, nothing would be left of Sec. 3 of the Act of 1851 except the words "incurred without the privity or knowledge," etc., and the Congressional Committee proceedings and the action of Congress thereon accepting the same, *show a deliberate purpose to omit this exceptive feature of the original act.*

The suggestion in some of the cases that it could not have been within the legislative purpose to eliminate "privity or knowledge," is not consistent with the language of Section 18, nor with the unmistakable purpose of Congress.

It seems that the limitation was to be as broad as language could make it, and it quite consistent with our public policy, as witness the Bankruptcy Act which releases "from all his personal debts," except such as the act in terms excepts.

Friend vs. Talcott, 228 U. S. p. 39.

or, as Senator Miller (New York) said, speaking of Sec. 18, when it was proposed to incorporate the language of the Frye amendment, all debts and liabilities incurred without his "personal consent or privity," (Cong. Rec. p. 397, Vol. 15, part 1, 48 Cong. 1st Ses.) :

"That is a remarkable change. As I understand the sentiment of the committee, it was really to make the ownership in all seagoing vessels a limited liability company, in which every individual was liable for only his share. That was notice to the whole world that nothing but the ship was holden. Now you are going to bring in a clause which would lead to interminable litigation, for some of the owners of a ship will be engaged in the management, they will know in regard to the affairs, and they will be held personally liable for everything, while other owners not immediately connected with the management will escape. The burden will all fall on one or two men if there is any burden.

It seems to me that in order to encourage the investment of capital in ship-owning we have to do substantially this: We have to make each ship company a limited liability company, and that is notice to everybody. If that is understood to be our law, everybody who trusts a ship does it with full knowledge that there is nothing back of it save the ship itself. Therefore no injustice will be done to any one. But if the amendment of the Senator from Maine prevails there will be two classes of owners in ships—one class, who will have control of the management, will be responsible for everything; and the other class will then take the position of silent partner, and will not be responsible."

We respectfully submit that the desirability of uniformity created by the conflict in principle and decision between the First and Sixth Circuits, and determination of the true meaning of the statutes in limitation of liability as they now stand, fully warrant asking this Honorable Court to exercise its right to direct the case to be brought before it for final determination.

We submit that the prayer of the petition should be granted and the record in the case directed to be sent to this Honorable Court in the furtherance of justice.

Respectfully submitted,

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Frank S. Masten,

Advocates.

Messrs. Miller, Smith, Canfield, Paddock & Perry,

Messrs. Holding, Masten, Duncan & Leckie,

Counsel.

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Supreme Court of the United States.

No. _____ October Term, 1917.

CAPITOL TRANSPORTATION COMPANY,
Petitioner,

v.

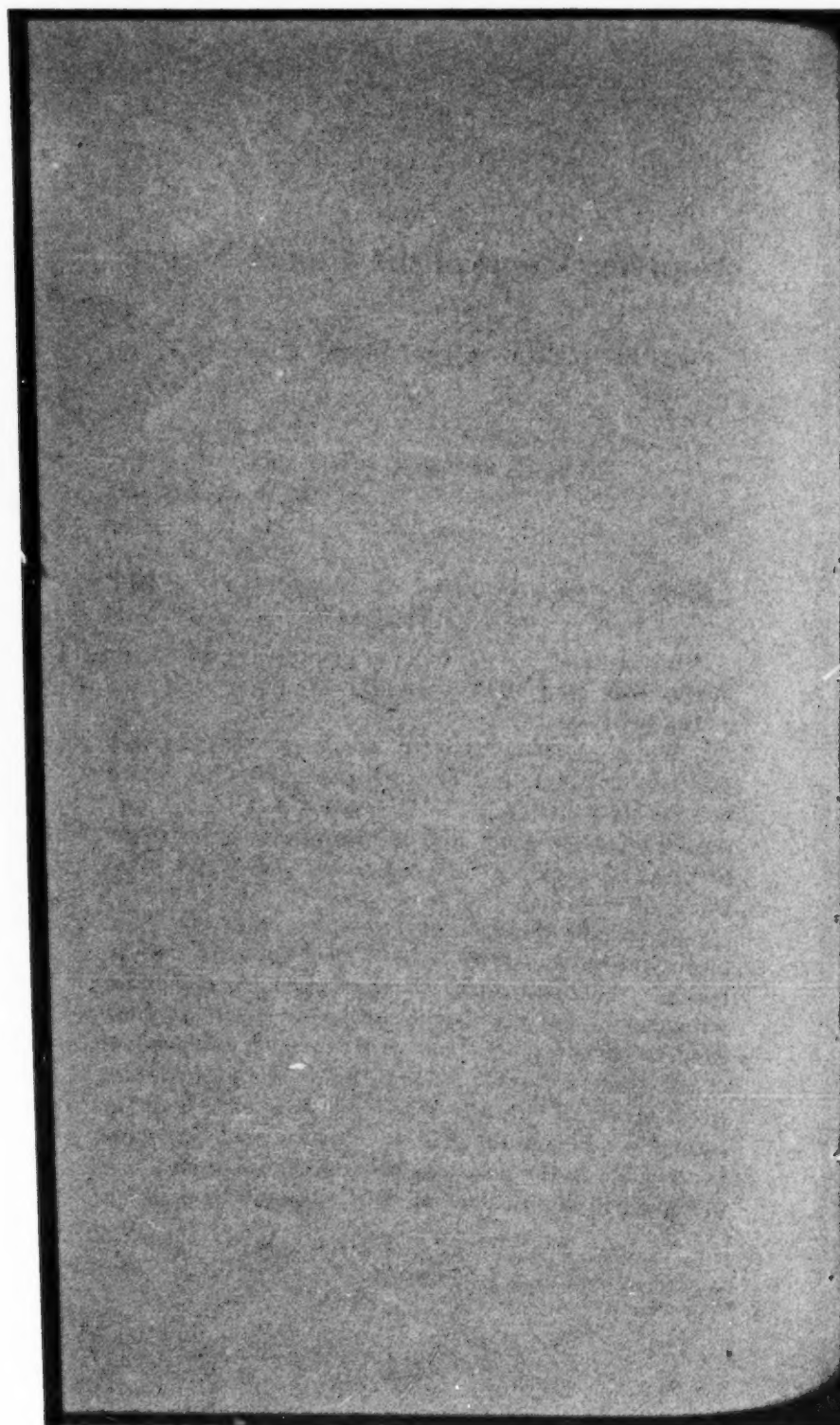
CAMBRIA STEEL COMPANY,
Respondent.

Brief in opposition to Petition for Writ of Certiorari.

FRANCIS S. LAWS,
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IN THE
Supreme Court of the United States.

CAPITOL TRANSPORTATION COMPANY,
Petitioner,

v.

CAMBRIA STEEL COMPANY,
Respondent.

BRIEF IN OPPOSITION TO GRANTING WRIT
OF CERTIORARI.

As we read the petition, a certiorari is asked for in this case upon three grounds set out on page nine of the petition.

We say without fear of successful contradiction that neither points one or two are raised by this record because the controlling facts therein stated are not supported by the evidence, and are directly contrary to the findings of both the District Court and the Circuit Court of Appeals.

As to the third point we answer that the right of limitation was refused upon two grounds. First, because the overloading of the ship was the direct wrongful act of the owner, which of itself is sufficient to sustain the judgment in this case independent of all other reasons. Second, upon the ground that the contract of carriage was a personal one with the owner. We dispute the petitioner's statement that there is a conflict in the decisions upon this latter point.

We will discuss each of these points in their order.

AS TO THE FIRST POINT.

"Is an agreement for carriage of a designated cargo, or a charter of a particular ship to carry a particular cargo, when made by brokers, authorized by an employee of the corporation, who exercised the powers of manager of the ship, the personal contract of the corporation so as to deprive it of its right of limitation under the statute?"

The answer to this point is, this was not a charter of a "particular ship" to carry a "particular cargo." It was a contract by a transportation company to carry a given quantity cargo at a specified rate, without regard to the ship that was to carry it. When the contract was to be performed, the "Noble" was furnished for the purpose. The shipper had no knowledge of the capacity of "Noble."

Again, the agreement was not made by brokers authorized by an "employee" of the corporation, who exercised the powers of manager of the ship. On the contrary, the contract was made by the general manager of the ship, who had the absolute control over her and who was also a director of the company. He merely communicated through his broker the terms to the shipper.

The Circuit Court of Appeals (Record, pp. 617-18) upon this point said:

"It is clearly to be inferred from the evidence that Francombe was the sole manager of the steamer 'Noble'; that appellant had employed him in that capacity; that he was invested with and he exercised the power of the corporation in selecting and employing the chief officers, such as the master and engineer, of the vessel and in determining what contractual services the vessel should engage in; that he was held out by the company and was recognized by persons, such as brokers, dealing in respect of the ship and her services, as the person ultimately entitled in such mat-

ters to represent and bind the corporation. The initial arrangement for the carriage of the steel rails in question was held in abeyance until it received his ultimate approval; and even the master would not complete the loading of the rails until he first obtained the sanction and direction of Francombe. In short, it is not shown that final authority in the respects mentioned resided in any person except Francombe; and he may rightfully be treated as in fact the company's manager. Since the board of directors of the corporation must be presumed to have exercised a supervision over its business, the board is to be charged with knowledge of the extent of the power usually exercised by its ship manager and held to have acquiesced in his possession of such authority, even though it had not been given in express terms when he was employed as manager of the vessel. *Sun Printing and Publishing Ass'n v. Moore*, 183 U. S. 642-650-1; *Walker v. Detroit Transit Ry. Co.*, 47 Mich. 338, 350. The language of Judge Severens in the Great Lakes Towing case, *supra*, at p. 21, would therefore seem to be peculiarly apposite:

"The Mills Transportation Company, being a corporation, could act only through some agency. McMorran was the manager, and was vested with authority to make such contracts as this in behalf of the owner of the vessel, and the contract was the personal contract of the corporation, not in consequence of any principle peculiar to the maritime law, but by virtue of the common law rules of agency."

"Francombe sanctioned and in effect made the verbal contract of affreightment out of which the present controversy grew; and the contractual obligation so created was the personal contract of appellant. In our view of the evidence, Francombe's knowledge that the steamer was overloaded is too clear for argument. It inevitably follows that this overloading took place with the privity and knowledge of appellant."

See also the "BENJAMIN NOBLE." District Court Opinion, Record pp. 476-495; 232 Federal, 382.

That the acts and knowledge of the general manager of a corporation will bind it, is no longer open to question.

Sun Printing & Publishing Co. v. Moore,
183 U. S. 642, 650-651;

Great Lakes Towing Co. v. Transportation
Co., 155 Fed. Rep. 11;

Petition for Certiorari denied, 207 U. S. 596-
597.

If Point One is made to conform to the facts, there is absolutely nothing upon which the petitioner can hope to secure a certiorari so far as this point is concerned.

AS TO THE SECOND POINT.

“Where a vessel is overloaded by ‘her master’ so as to be unseaworthy, and the fact of overloading is known to an ‘employee’ of the owner, who exercised the powers of manager of the ship, is such privity or knowledge that of the corporate owner so as to deprive it of the right of limitation of liability?”

The vice in this point is the statement of fact that the vessel was overloaded “by her master,” and the fact of overloading was known to “an employee” of the owner, who exercised the powers of manager of the ship.

As heretofore shown, the Court found that Francombe was not merely “an employee” of the corporation, but was the general manager, having sole control of the ship, and also a director.

Moreover the vessel as not overloaded by “the master,” if by that is meant under his direction and

authority. The fact is, he absolutely refused to determine the quantity of load to be taken until he received instructions from Francombe, and indeed the very last car load that went into the ship was taken only by Francombe's instruction.

Upon this point the Circuit Court of Appeals, affirming the District Court, said (Record, p.): :

"The initial arrangement for the carriage of the steel rails in question was held in abeyance until it received his (referring to Francombe) ultimate approval and even the master would not complete the loading of the rails until he first obtained sanction and direction of Francombe."

. . . .

"In our view of the evidence, Francombe's knowledge that the steamer was overloaded is too clear for argument. It inevitably follows that this overloading took place with the privity and knowledge of the appellant." (Opinion of the Circuit Court of Appeals, Record, pp. 617.)

Again the District Court (Record, p. 495; 232 Federal, 297-392) found:

"When he (the captain) got along up to Detroit the managing agent (meaning Francombe) went aboard of her, saw it and talked with him about it, and the managing agent with his experienced judgment must have known she was overloaded and yet he permitted her to go on her journey, thinking, no doubt, she would get through, and of course, hoping she would get through.

"It was the mistake and wrongdoing of the owners of the vessel, and they are not entitled to limit their liability, and they are responsible for the damages which resulted."

These findings we submit, show that Point Two is of no value, because it does not present any legal question based upon facts which the record will support.

To emphasize the extraordinary and controlling features of the overloading, we call the Court's attention to the following findings:

The "NOBLE" was designed and built to carry approximately 1800 tons, whereas she actually loaded 3305 net tons in addition to fuel and stores, an overload of about 1000 tons. (District Court Opinion, Record, p. 467.)

The "NOBLE" was designed and built to draw 14½ feet of water, whereas at the time of her loss she was loaded to a mean draft of 17 feet 10 inches, an overdraft of 3 feet 4 inches. (District Court Opinion, Record, pp. 488-490-491.)

She was designed to have a free-board of approximately 3½ feet, whereas at the time she was lost her decks were practically awash. (District Court Opinion, Record, p. 485.)

At the time of her loss she carried the biggest load in her history, and the biggest by 300 tons of any ever carried in the month of April.

In the vicinity where the "NOBLE" foundered there were eight other vessels, some light and some loaded, some large and some small, some proceeding with the wind and some against it. None of them were lost or in danger of being lost.

AS TO THE THIRD POINT.

"In view of the fact that in Section 18 of the Act of June 26, 1884, the words 'incurred without his personal privity or consent' were intentionally and purposely omitted by Congress, and the right of limitation was expressly given to cover 'all debts and liabilities,' and that Section 30 of the same Act expressly repeals 'all laws and parts of laws in conflict' therewith, was not the language of Section 3 of the Act of

1851 repealed so that the limitation of liability now in force under the statute of June 26, 1884, covers all debts and liabilities except for wages, irrespective of any privity or knowledge concerned in the duty or liability?"

Under this point the petitioner argues that the Act of 1884 supersedes and repeals the Act of 1851, and further, that since the passage of the latter act there has been such a conflict in the decisions of the Courts upon the question as to whether or not a limitation of liability will be permitted in the case of a personal contract with the owner, that the present case ought to go before the Supreme Court upon that question.

We answer the first contention by saying that this Court, in *Richardson v. Harmon*, 222 U. S. 96-103, has expressly decided against the petitioner. The Court said:

"No purpose to repeal or qualify any of the terms of the existing liability law is declared, nor is this section declared, in words, to be an amendment of that law. . . .

"The legislation is in *pari materia* with the act of March 3, 1851, 9 Stat. 635, c. 43, as carried into the Revised Statutes as Section 4283 et seq., and must be read in connection with that law, and so read, should be given such an effect not incongruous with that law so far as consistent with the terms of the later legislation. The former law embraces liabilities of maritime torts, but excluded both debts and liabilities for non-maritime torts. The section under consideration includes debts, save wages of seamen and liabilities of an owner incurred prior to the passage of the law."

"Neither is it necessary to conclude that the section in question is a repealing act as to any of the qualifications of the preceding limitations found in Section 4283, et seq., of the Revised Statutes. To so hold would be to attribute to Congress a wider purpose than we have any reason

to suppose—that of extending the benefits of Sections 4283, et seq., regardless of the owner's knowledge or privity.”

Similar rulings have been made by the Federal Courts.

Great Lakes Towing Co. v. Transportation Co., 155 Fed. Rep. 11.

No authority has been cited by the petitioner contrary to these pronouncements.

As to the petitioner's second contention, we say that the merits of this cause are not dependent upon the effect of a personal contract with the owner, because the decision was not put upon that ground alone.

The refusal of limitation was placed primarily upon the ground that the unseaworthiness of the “NOBLE” resulted from the petitioner's own wrongdoing in directing and approving, with full knowledge of her capacity, the overloading of the ship, in consequence of which she foundered. This of itself is a sufficient ground to sustain the present decision, irrespective of any question of the effect of a personal contract. Indeed, the petitioner scrupulously avoids discussing this phase of the case, for the evident reason that it is unanswerable. There is no conflict of the law upon this point and never has been.

Butler v. Boston S. S. Co., 130 U. S. 527, 549-553;

Richardson v. Harmon, 222 U. S. 96, 103-106;

Great Lakes Towing Co. v. Transportation Co., 151 Fed. 11;

The Republic, 61 Fed. 109-113;

The Annie Faxton, 75 Fed. 312-313.

If therefore the Court should find, which we do not anticipate, that under a personal contract, limitation of liability in certain cases may be permitted, it will make no difference in the final result here, because of the other and all sufficient ground for refusing limitation heretofore quoted.

Furthermore, upon this point, we do not concede there is such a conflict in the authorities as the petitioner would have the Court believe. All of the cases that have passed upon the question are in accord with the present decision, including *The Loyal*, 208 Fed. 930-933, from which the petitioner quotes on page 8 of its brief. The excerpt there is not from the opinion of the majority of the Court, but from a separate opinion filed by Judge Lacombe, who fully concurs in the majority decision, and merely expresses a personal view, that because of the narrowness of the question under the facts in that particular case, he thinks it would be desirable to have a construction by the Supreme Court upon the question.

In the cases of *Benner Line v. Pendleton*, 217 Fed. 497, and *The Julia Luckenbach*, 235 Fed. 388, writs of certiorari were granted solely upon the so-called "personal contract" question, and upon facts in no wise analogous to those in the case at bar. In neither of these cases was the unseaworthiness brought about by the direct act and wrongdoing of the owner, but limitation was refused because of the breach of the implied warranty of seaworthiness. These cases, therefore, even if reversed upon this point, will not be determinative of ours, nor offer a ground for its reversal, for the reason already stated, that the petitioner can never secure a limitation in the face of the findings of both the District Court and the Circuit Court of Appeals, supported by ample evidence, that the steamer "NOBLE" foundered as the direct result of the owner's wrongdoing.

So far as the references to the Records of Congressional proceedings quoted in extenso on pages 14 to 19 of the petitioner's brief are concerned, we may say that their bearing upon the interpretation of the Acts of 1851 and 1884 is no longer a matter of uncertainty. This Court has fully considered the history of this question in *Richardson v. Harmon*, 222 U. S. 96. We deem it unnecessary to do more than to refer to the opinion in that case.

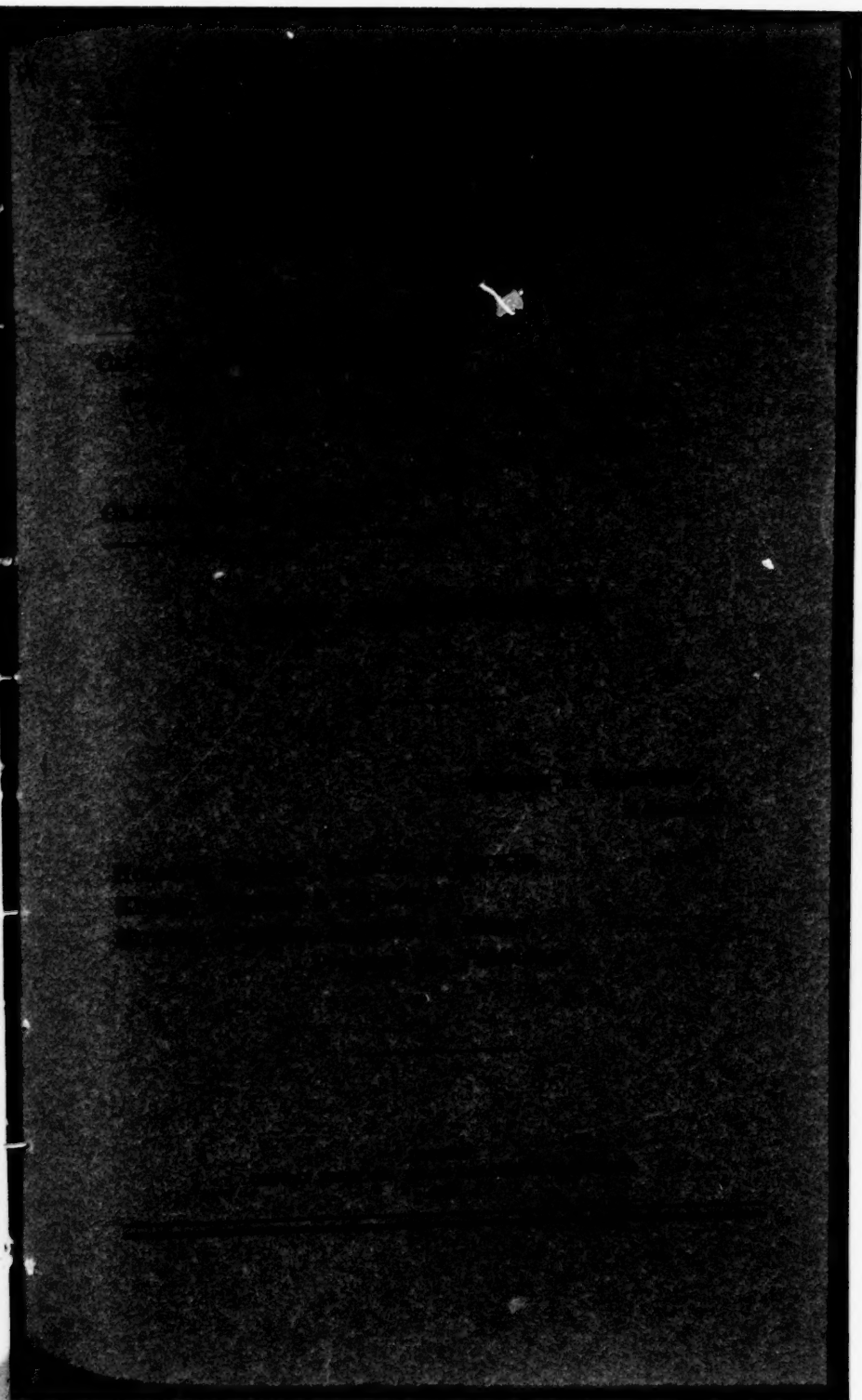
It is, therefore, respectfully submitted that the decision of the Court of Appeals, affirming the District Court, in finding as facts that the petitioner contracted for, directed, and approved the overloading of the steamer "NOBLE," which resulted in her loss, is correct, and that such act disentitled the petitioner to a limitation of liability.

We further submit that the writ should be denied with costs.

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Proctors for Respondent.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

CAPITOL TRANSPORTATION COM-
PANY,

Petitioner,

VS.

CAMBRIA STEEL COMPANY.

In Admiralty.

No. 231.

BRIEF FOR PETITIONER.

STATEMENT OF CASE.

The petitioner's steamer, Benjamin Noble, was lost on Lake Superior with all on board, during a severe storm in April, 1914. Suits in admiralty were subsequently commenced in the name of the Cambria Steel Company, at Philadelphia and Chicago, for the recovery of the value of the cargo. The petitioner, a Michigan corporation, then filed its petition for limitation of liability in the District Court below (1-4), and further proceedings were there had under Admiralty Rules 54-57.

The district court denied the petition and entered its decree against the shipowner for \$94,199.51 (453). This decree was affirmed by the Court of Appeals (527) and this Court called up the record by certiorari (533).

The courts below denied limitation of liability for this cargo loss on two grounds,

First: Because the contract of affreightment was a "personal" one between the Cambria Steel Company and the Capitol Transportation Company. This contract is described by the Court of Appeals as (528):

"A contract whereby appellant agreed to transport and carry for appellee in one shipment a cargo of 3,000 tons of steel rails from the port of Conneaut, Ohio, to the port of Superior, Wisconsin, at 80 cents per gross ton, the dangers of navigation, fire and collision excepted."

Second: Because the Benjamin Noble was overloaded within the privity or knowledge of John A. Francombe, the manager of the ship.

The greater part of the printed record at bar is filled with testimony on the question of fault for the disaster. The shipowner contended that the ship had sailed in seaworthy condition and never arrived at destination; that shortly after she had been last seen on Lake Superior, on her course, a severe storm swept those waters and only a few pieces of wreckage ever reached shore; and that the loss should be held to have been caused by perils of navigation within the exceptions of the contract of carriage. The cargo owner contended that the ship had sailed in an unseaworthy condition, due to an inexperienced master, defective steering-gear, insufficient scuppers and an overloading; it also questioned the severity of the storm during which the ship disappeared.

As noted by the district judge in his oral opinion (425) counsel for both parties were diligent in presenting every phase of testimony which could be obtained in order to clear up the mystery which enveloped the disaster but it could not be solved. She had loaded at Conneaut for Lake Superior; stopped at Detroit for inspection by the United States Inspectors and been passed by them as seaworthy

for the trip; passed Sault Ste Marie and entered Lake Superior, where she was last seen by the Norwalk off Portage, on April 27 (194), apparently going on her course in the usual way. Soon after the Norwalk became involved in an ominous storm and ran for shelter. The gale became very serious and on April 29 a few bits of wreckage of the Noble came ashore at the westerly end of Lake Superior (156) about one hundred and fifty miles from where she was last observed.

The general seaworthiness of the ship and competency of her master and crew were established by the evidence, and the district judge found (opinion, 422):

"So we start in with this well built and seaworthy ship at Conneaut, Ohio, with a master and crew qualified for their positions; with the owner of the ship having made a personal contract with the owner of the cargo to carry 3,000 tons of steel rails on the first trip of the season from Conneaut to Superior."

The facts in respect of this personal contract are these:

The owner of the ship was the Capitol Transportation Company, a Michigan corporation, of Detroit. It had built the Noble in 1909 and employed John A. Francombe, of Detroit, to manage her at a salary (268). He was, as we show later, what is styled in the books and maritime parlance, "ship's husband," "managing-owner" or "manager" of the ship. She also had other agents or brokers at Buffalo, Cleveland and Duluth, to get cargoes (268), those at Cleveland being Mitchell & Co. (422; 41).

The owner of the cargo was the Cambria Steel Company; it had engaged to deliver 3,000 tons of rails to the Great Northern Railway at the opening of navigation and was looking for a ship to carry them (20); its sales agents in Cleveland were M. A. Hanna & Co., to whom it wrote (Ex. 3,480) to get a boat: McMorris, of the Hanna office,

then telephoned Mitchell & Co. two or three times and was told he could have the Noble (37-39). Mitchell telephoned Francombe at Detroit and told him that he "had chartered the Benjamin Noble to M. A. Hanna & Co., a cargo of steel rails, Conneaut to the head of Lake Superior, 80c," and Francombe said to take it (42-43). This was early in March, 1914.

Matters so stood until early in April, when Francombe called on McMorris in Cleveland; he says (272) :

"I asked him about the rails, whether he had them all in and he said yes, there were 3,000 tons in. I told him we had a new captain in this boat and I didn't know how many tons he would take. Now I said, he may take 3,000 tons and he may only take 2,800, but I said it is all up to the captain. Why, he said, we chartered her for 3,000 tons through Mitchell & Company. I said that does not make any difference. I said we are carrying the insurance on that boat, and we dassent interfere with our captain. I said I never done it yet. I said I don't know how much the captain will take when he gets down there. He asked me how much I thought he would take. I told him I could not tell him, but I said whatever he leaves there I will pick them up the next trip; I will have the captain come around and pick them up the next trip.

Q. What did Mr. McMorris say to that?

A. He said that was all right, if I would surely do it.

Q. What did you say regarding the next trip?

A. I told him I would pick them up the next trip, I would have the boat come around there, I expected she would come to Oswego, and she would go over there and fuel up."

McMorris agrees that this arrangement was made (41).

This shows the entire arrangement between the parties; their respective brokers had made a parol agreement for the carriage of 3,000 tons in the Noble at 80c; the Cambria sent the rails to Conneaut and Francombe arranged with McMorris that the amount loaded on the first trip should

be determined by the judgment of the master, the balance to be taken on the second trip.

This is the only "personal contract" within the record.

It should be noted here, however, that when the ship was loaded the master issued and delivered to the Cambria Steel Co. the bill of lading, Ex. 1 (462). It is our contention that this is the real contract of carriage and superseded the original, informal, parol arrangement.

It should also be noted that this bill of lading is the contract described by the Court of Appeals in its opinion at Rec. 528.

Having arranged with McMorris that the shipment might be divided between two trips, according to the master's judgment, Francombe told him to go to Conneaut and put on what he thought the boat would carry; he then returned to Detroit.

The Noble reached Conneaut about April 15 and was there loaded by employees of the Cambria Steel Co. with the cargo in question; they agree that it was the judgment of the master which determined the amount they put on board.

Pctition, Art. 3 (2);

Answer, Art. 3 (9);

Roberts, dock foreman (62-65);

Goldsmith, labor foreman (69-74).

Francombe was not at Conneaut at all and took no part in the loading. On April 17, in Detroit, he received a telegram from the master:

"Will be loaded Saturday noon. Mitchell wants 3000 tons or less if possible. Please advise."

To which he replied:

"Think 3,000 tons too much. Best take all you possibly can."

There is no testimony, however, to show that this reply reached the master before he sailed on April 18 or was ever delivered.

The Noble reached Detroit on Sunday, April 19, and lay there for Government inspection (280) and some change in her steering gear which the Inspectors required (281). They passed her as seaworthy for the trip (222-231) and she continued the voyage (284). Francombe was on board of her as she lay at Detroit (283) but never saw her afterwards.

The district court found that she had been overloaded at Conneaut so as to be unseaworthy and that the above facts (contract and overload) made the shipowner personally liable for the loss of the cargo and deprived it of the protection of the statutes in limitation of liability.

The Court of Appeals affirmed the District Court, saying (529) that it saw "no sufficient reason to disturb this finding unless, as counsel claim, it was reached through erroneous application of law." The appellant had urgently sought a re-examination of facts as on the usual appeal in admiralty but the opinion indicates that the appellate court treated the findings of the court below as if the action had been at law.

The record was then called into this Court by certiorari (533).

The petition upon which the writ issued presented these questions:

1.

Is an agreement for carriage of a designated cargo or a charter of a particular ship to carry a particular cargo when made by brokers authorized by an employee of the corporation, who exercised the

powers of manager of the ship, the personal contract of the corporation so as to deprive it of its right of limitation under the statute?

2.

Where a vessel is overloaded by her master so as to be unseaworthy, and the fact of over-loading is known to an employee of the owner who exercised the powers of manager of the ship, is such privity or knowledge that of the corporate owner so as to deprive it of the right of limitation of liability?

3.

In view of the fact that in Section 18 of the Act of June 26, 1884, the words "incurred without his personal privity or consent" were intentionally and purposely omitted by Congress, and the right of limitation was expressly given to cover "all debts and liabilities," and that Section 30 of the same Act expressly repeals "all laws and parts of laws in conflict" therewith, was not the language of Section 3 of the Act of 1851 repealed so that the limitation of liability now in force under the statute of June 26, 1884, covers all debts and liabilities except for wages, irrespective of any privity or knowledge concerned in the duty or liability?

ERRORS RELIED ON.

In so far as the argument is confined to these questions, the errors relied on are these :

That the court below erred in holding that the agreement mentioned in Question 1 was the personal contract of the corporation so as to deprive it of its right of limitation of liability.

That the court below erred in holding that knowledge of an overloading by the master, on the part of the employee mentioned in Question 2, was such privity or knowledge of the corporate owner as deprived it of the right of limitation.

That the court below erred in not holding that Question 3 must be answered in the affirmative.

That the court below erred in holding (531-532) that Francombe was the manager of the corporation and that he had made such a contract and so overloaded the vessel as to prevent the corporation from limiting its liability as prayed in its original petition herein.

BRIEF OF ARGUMENT.

Questions 1 and 2 depend on the authority of the employee mentioned; this must be ascertained from the express terms of his employment and what the law implies therefrom.

Our proposition is that the law of limited liability protects the shipowner against the contracts or torts of the ship's manager just as it does against the contracts or torts of the ship's master.

From early times the ship's business has required at least two agencies unless the owner attended in person, one to handle her at sea and one to attend to her affairs on shore. The first is called the "captain" or "master" and the second, indifferently, "manager," "managing-owner," "ship's husband," "shore captain" or "managing agent." The master's province included that of the manager but it was found more convenient to assign a part of his duties to this other functionary, without however, limiting his general and predominating authority over the entire ship.

The district judge calls men in this position "managing agents or shore captains" (433-448). "Ship's husband" is the expression which appears most frequently, perhaps, in the books although "manager" is the oldest form and is now returning into general use. But the terms are all synonymous, in view of the work for which the individuals are employed, and the authority they exercise.

In this case, John A. Francombe was the employe of the corporation who exercised the powers of manager of the ship. The only evidence in the record about his employment is his own. (268-9) :

Q. Whom did the company employ to manage that ship?

A. Employed me.

Q. At a salary?

A. Yes, sir.

Q. As manager, what had you to do with chartering the ship?

A. Well, I was to look out for the loads and deal with the brokers.

Q. Whether or not loads were obtained from ship brokers?

A. Yes, sir.

Q. Who were some of them?

A. Mitchell kind of handled her in Cleveland; Boland in Buffalo.

Q. And who at Duluth?

A. Kelland and sometimes we got Davidson—Mr. Masten; Tomlinson?

A. Yes, sir.

Q. Who decided on the employment of the ship?

A. The employment.

Q. Of her business; where she was to go?

A. What do you mean? Who hired the captain?

Q. No, who decided what cargo she should take?

A. It was me.

Q. And who employed the masters?

A. I did.

Q. And you employed the engineer?

A. Yes, sir.

Q. You did?

A. Yes, sir.

Q. And who employed the rest of the crew?

A. The captain and the engineer.

Q. That is in accordance with the usual practice on the lakes?

A. So far as I know.

Q. Who attended to the collection of her freight?

A. Why sometimes on coal freight the captain would collect it, and on steel, iron ore or pig iron or rails, why they would send a check to the office maybe 30 days afterwards; I think it was 30 days.

Q. What did you have to do with the collection of the money?

A. I didn't have anything to do with the collection of the money.

Q. Who paid the bills of the ship?

A. The captain paid—

Q. What office did you mean when you referred to the office?

A. The Capitol Transportation Company's office; Mr. Dietz.

Q. Mr. Dietz, the secretary?

A. Yes, sir.

Q. And that office was where?

A. Down at the corner of Chene and Franklin.

Q. In Detroit?

A. Yes, sir.

Q. Who attended to the payment of the vessel's accounts?

A. The captain paid all the little running expenses except the main fuel bills.

Q. And where were the bills paid from?

A. The main fuel bill?

Q. All other accounts paid?

A. The captain paid that.

Q. Outside of those—who paid the other accounts?

A. They were paid at the office.

Q. The same office to which you referred?

A. Yes, sir.

Q. Now who attended to the navigation of the ship?

A. The captain.

Q. Who attended to her loading?

A. The captain.

Q. And how was the cargo usually unloaded?

A. Her cargoes—they used our hoists, and their men unloaded them.

Q. The consignee?

A. The consignees, yes.

There is nothing to show that the owner ever clothed Francombe with any apparent larger authority; neither the Cambria Steel Company nor its brokers had any communications with him whatever except the single interview which left the amount of load to the masters

judgment (28) ; there are no circumstances of estoppel in respect of his powers in the case.

The facts are exceedingly simple—the corporation employed Francombe at a salary to “manage” the Noble—to look out for loads and deal with brokers, and hire the master and engineer. He never pretended to have any larger authority and the corporation never held him out in any other capacity. In the matter of employing the master, he took him to the President and Secretary (275) ; the original agreement for the cargo was made by ship brokers (37 ; 41) ; he arranged a modification of it so that the amount of load should be determined by the master (272) and his position in regard to that officer was clearly expressed when he said to the Cambria broker :

“We dassent interfere with our captain ; I never done it yet.” (272)

All the evidence is before the Court and there is no pretense that any one was deceived by Francombe’s title, or reputed title—counsel for the cargo told the Court that he was the “managing-owner” (232) and there is nothing to show that any one ever supposed that he was anything else.

Nor does the law imply into his position any larger authority than he actually had. Similar positions and titles seem to be as old as navigation.

Ashburner’s Rhodian Sea Law (Clarendon Press, 1909) ; cxxxvi :

“Where the ship had a single owner he often managed it himself. Where he managed it through an agent, the agent was generally called *praepositus* (Consuetud. Bari. f.118 of ed. 1550, p. 152 in *Alianelli* ; St. Zara, IV. 49, 50, perhaps a reminiscence of Dig. IX., 3, 6, 3 and XIV., 1, 1, 7) or *suprapositus* or *superpositus* (St. Zara, IV., 50, St. Spalat, VI. 53 ; St. Ragus, VII. 14—St. Phara, V. 4).

Whether the *manager of the ship* was the agent of many or of one, his powers were in substance those of the Roman *magister nauis*. He collected the receipts of the ship, paid its outgoings, and handed over the balance to the owner or owners. He had in case of necessity a power of borrowing on the credit of the ship, or even of selling it (Authorities, *supra*, and see p. clxv). * * *

"CLXV. The majority of the owners *appoint the Manager* (St. Ragus, VII. 18). A co-owner who has sufficient technical knowledge has a preferential claim to be appointed (Targa, p. 42). Hence we find that the *naucerus* often owns a share (Sacerdoti, p. 40; Scriba, 645; other authorities below).

In the documents we often find cases where one owner receives the shares of the other *in commenda* (see *post.*) No doubt this was found a convenient expedient for giving the *managing owner* a power of disposition over the shares of the others, and for relieving persons who dealt with him from the necessity of inquiring into the extent of his authority. Sometimes the merchants are given the power of choosing the *naucerus* (Mas Latrie, *Traites de Paix*, Documents, p. 39).

The majority of the owners may incur necessary expenditure on the ship, and may for that purpose charge the whole ship, including the shares of dissenting members (St. Ragus, VII. 17; *Consuetud. Bari*, f. 118 of ed. 1550; p. 152 in Alianelli *St. Ancon*, c. 3, c. 40). The obscure c, of the Sea-law probably refers to a case of this kind. As the majority of the owners may do it, so may their agent, the *manager*, do it (Authorities, *supra*)."

25 *Ency. Law* (2nd ed. 1903) 886. Ships and Shipping; Management by Ship's Agent.

"The owners of a ship generally appoint some person, usually one of their number, to be her *manager*. This person is called the *ship's agent* or *husband*."

Parson's Mercantile Law (1862) 337:

"Commonly, the *ship's husband*, as the agent of all the owners for the *management* of the ship has

long been called, is one of the part owners. But he is not so necessarily. He may be appointed in writing or otherwise."

Jacobsen's Sea Laws (1818) uses the terms ship's husband and managing owner interchangeably (39, 40, 45, etc.); *Patterson's Nautical Dictionary* (1891) describes him as "the ship's overseer; one who attends to the vessel's repairs and transacts her business etc." and Judge Hitchcock, in the *Andes*, 18 Ohio, 187, 213, says:

"A ship's husband is an agent of the owner of the ship, and in almost every port frequently visited by a ship will be found some agent to attend her concerns in that port. In our western ports we find many of this description of agents, and, in common parlance they are called the agents of the particular crafts to whose concerns they attend."

(See similar expression in opinion district court 422).

1 Parson's Shipping & Admiralty (1869) 109.

"The ship's husband is the general agent of the owners in respect to the ship, and may be appointed like other agents, by a written instrument or orally. In our statutes of Registration he is called the managing owner."

R. S. 4141 (7 U. S. Comp. Stat., Sec. 719). (Act of Dec. 31, 1792.)

"Every vessel, except as is hereinafter provided, shall be registered by the collector of that collection district which includes the port to which such vessel shall belong at the time of her registry; which port shall be deemed to be that at or nearest to which the owner, if there be but one, or, if more than one, the husband or acting and managing owner of such vessel, usually resides."

Story on Agency, Sec. 35:

"Ships' Husbands. A ship's-husband is a common expressive maritime phrase, to denote a peculiar sort of agency, created and delegated by the owner of a ship, in regard to the repairs, equipment, management, and other concerns of the ship.

A ship's-husband is sometimes appointed merely for the purpose of conducting the ordinary and necessary concerns of the ship on her return to her proper home port; such as making the proper entries at the custom-house; superintending the landing of the cargo; procuring the proper surveys of damage; settling the freight, and other incidents connected with the discharge of the cargo, and the termination of the voyage. But, generally, the person designated as ship's-husband has a much larger authority, and is understood to be the general agent of the owners, in regard to all the affairs of the ship in the home port. As such general agent, he is intrusted with authority to direct all proper repairs and equipments, and outfits for the ship; to hire the officers and crew; to enter into contracts for the freight or charter of the ship, if that is her usual employment, and to do all other acts necessary and proper to despatch her for and on her intended voyage. But his authority does not extend to the procuring of any policy of insurance on the ship, either in port, or for the voyage, without some express or implied assent of the owner."

Beaures (Lex Mercat, 47, 6th edit.) :

"Ship's-husbands, a class of agents so called, whose chief employment in capital seaport towns, particularly in the port of London, is, to purchase the ship's stores for the voyage; to procure cargoes on freight; to settle the terms and obtain policies of insurance; to receive the amount of the freight both at home and abroad; to pay the captain or master his salary, and disbursements for the ship's use; and, finally, to make out an account for all these transactions for his employers, the owners of ships, to whom he is, as it were, a steward at land, as the officer bearing that name is, on board, when the ship is at sea."

Gillespie vs. Winberg, 4 Daly (N. Y.), 318-321 :

"Where duties of this description are discharged at the home port or place where the vessel belongs, by a person appointed by the owners, he is known by the maritime term of the "ship's husband" (Story on Agency, Sec. 35; Abbott on Shipping, Part 1, c. 3, p. 105, 8th Lond. ed.; 1 Bell's Com. 410, 411, Sec.

426, 428, 429, 4th ed.; Id. 504, 505, 5th ed.; 1 Parsons on Shipping and Admiralty, 109). 'He is, as it were' says Beawes, 'a steward at land to the owner of the ship, as the officer bearing that name is on board when the ship is at sea (Beawes' Lex Mercatoria p. 47); and as the power of the master to enter into contracts, etc., is superseded in the port of the owners, so is it by the presence of the ships' husband' (1 Bell's Com. id).

"So far as my information extends, this 'expressive maritime phrase,' as Story call it, of 'ship's husband,' is used only to designate the person who, in the home port, where the vessel belongs, does what the owner would otherwise do, obtains a cargo for her, and attends to everything essential to the due prosecution of the voyage for which the cargo has been obtained, and it is as designating a person of this description residing at the place where the vessel belongs, that the term is used in the statutes of the United States (Act of 31st of Dec., 1792, Sec. 3; Dunlop's Laws of the U. S. p. 107). According to Beawes, he 'collects the freight both at home *and abroad*, pays all the ship's disbursements, and makes out an account of all these transactions for his employers, the owners of the ship' (Beawes' Lex. etc., p. 47).

Whilst the ship is abroad, the master is empowered to do all that is essential during the voyage. He may be said to be then the ship's husband, except so far as he may be limited by his instructions; and if the duties which he would otherwise discharge in a foreign port, with respect to the vessel—such as entering her at the customs, collecting the freight, obtaining a cargo, and clearing the vessel—is, by the owners' directions, intrusted to a person at that port, then, in my judgment, she is consigned to that person, and he may, with entire propriety, be called the consignee."

The Ole Oleson, 20 Fed. 384 (E. D. Wis. 1884) :

"The duties of the ship's husband are in general to provide for the seaworthiness of the ship, to take care of her in port, to see that she has on board all necessary and proper papers, to make contracts for freight, and collect the freight and all returns."

It is plain that Francombe's position, by the terms of his employment, the work which he did, and the title, if any, by which he was known, was no more than that of managing-owner or ship's husband, as those terms have been long used in the law.

Questions 1 and 2, therefore, embrace the enquiry whether a shipowner, corporate, several, or individual, is protected by the Limited Liability acts against the acts or omissions of the ship's husband or manager.

On principle, we submit, such protection should be given. The purpose of the world-wide legislation on this subject is familiar. It includes fault on land as well as at sea (*Richardson vs. Harmon*, 222 U. S. 96) and the acts of persons on shore as well as on shipboard ;

The Warkworth, 9 P. D. 20, 21.

"The Acts in question seem to me to be valuable ones, and the fact that they interfere with a plaintiff's common law rights is no reason why they should be construed differently from any other Acts of Parliament. I apprehend that the intention of the legislature in all the Acts which have dealt with this subject has been to relieve shipowners to some extent from the consequences of the negligent acts of persons employed by them. Prima facie I do not see why the amount of relief afforded should be limited to a case where damage has occurred through the

The ship's husband appears in most of the foreign codes and text books under similar titles—*mari du navire*, *armateur-gerant*, *directeur gerant*, *directeur*; his powers are substantially the same everywhere and, in general, the same rights of limitation of liability appear as in the case of the master.

Desjardins Traite des Proprietaires des Navires et des Capitaines; sections 1, 2, 3.

negligence of the officers and crew, and why the Acts should not apply to the negligence of persons employed in preparing a ship for the voyage, such as an engineer, other than the regular engineer of the ship, who has been called in to repair or overhaul the engines in dock."

The Warkworth—on appeal—9 P. D. 145.

"For this statute is only necessary where there has been some accident caused by the negligence of persons for whom the owner is responsible. Therefore it must be taken that the collision was the result of the negligence of some one for whose want of care and skill the owner is responsible. To say that the statute does not apply to negligence on shore is true if it has no effect on the navigation on the water. You must assume that the negligence on shore had its effect on the water, and had an effect on the ship. * * * It was argued that the statute must mean damage caused by the negligence of the master or crew, but this is too narrow an interpretation of the words, for improper must be considered as synonymous with wrongful. The case falls within this proposition—all damage wrongfully done by a ship to another whilst it is being navigated, where the wrongful action of the ship by which damage is done is due to the negligence of any person for whom the owner is responsible, is comprised within the statute. The decision of Butt, J., was correct, and this appeal must be dismissed."

Wheeler's Modern Law of Carriers, 12.

"The rule protects owners from ruin, which would otherwise overtake them from the fault of their agents, without any fault of their own. As was said by Hull, J., as long ago as the Year Books, 2 H. IV. fol. 18, p. 6; 'This were against all reason to put blame or fault upon a man when there is none in him, for the negligence of his servants cannot be said to be his own.'"

Quinlan vs. Pear, 56 Fed., 111, 117.

"We have seen that the Supreme Court holds that the owners are not chargeable as with privity or knowledge for the acts or defaults of a properly

selected master, while the ship is at sea; and that, in the view of the courts of probate division and of appeal, they are not ordinarily so chargeable for the doings or omissions of an agent in port,—certainly, at a port which is not the home of the owners. We are also constrained to the belief that this statute, which the Supreme Court directs shall be interpreted broadly, has regard for the usual necessities of the occupations of life, and in that respect intends that owners may avail themselves of the proper facilities common to business men, and be relieved, so far as it is concerned, whenever and so far as they have appointed a suitable representative, be he master, consignee, or other agent, to supervise the ship, either at sea or at the home port, or otherwise, and either for fitting her away, or navigating her after she is so fitted away. The law, for the purposes of this case, cannot make a distinction between the owner who has but one vessel, and time and opportunity to give it his personal attention, and the owner who has many vessels, or whose necessities call him long distances from his residence, or whose infirmities, sickness, inexperience, or sex renders him or her incapable of attention to affairs of this nature. Therefore we establish uniformity of application of the law, and fulfill the spirit of the expressions of the Supreme Court to which we have referred, when we hold that, even if the owner is chargeable under the statute with privity or knowledge, who permits a ship to sail from the home port without making provision for inspection or proper fitting away, yet he may rest his duty upon any suitable agent, and, when he has done this, he may be relieved under the statute, although the agent may be negligent in some particulars. Whether, where the owner undertakes personally to do this duty, he is to be charged for the lack of the extreme care possible, or takes the hazzard of overlooking some things which the utmost scrutiny might discover, or whether, acting with ordinary good faith, he will be relieved, provided the defect in question did not come to his attention, we are not now required to determine."

If these references indicate the general purpose of the law, and we believe that they do, it must follow that the owner is no more chargeable for the acts of the ship's husband than of the ship's master. The former's powers are, by definition, much smaller than the latter's in all matters pertaining to the business of the ship.

Compare enumeration of respective powers of these two agents in 3 Kent's Comm. (13th ed.) 157-160.

The Court of Appeals below identified Francombe with the corporation and denied limitation because the original agreement had been *sanctioned* by him and also because he knew that the steamer was overloaded (opinion 532).

Error is assigned against each of these conclusions and our contentions thereon are presented further on but attention is requested here to the reasons on which that Court based the result in question, as they appear in its opinion on page 531 of the record.

The Court treats the question as if controlled by common-law rules of agency and corporate management and without reference to the different rule of the maritime law above mentioned. The ship's manager or husband is treated as a general or universal agent, for all purposes, and instead of manager of the ship he is made general manager of the corporation. Here, as in *Great Lakes Towing Co. vs. Trans Co.*, 155 Fed. 11, the Court held, as matter of law solely, that the ship's manager binds the corporation beyond limitation of liability, "not in consequence of any principle peculiar to the maritime law, but by virtue of the common-law rules of agency." In *Davidson vs. Baldwin*, 79 Fed., 95, 100, the Court had held that the character of manager was

"An agency unknown in the general maritime law, and the authority implied from such a position is in that law undefined."

And that idea was evidently carried forward into the Mills and present cases,—the Court feeling that if managers were unknown in maritime law, the common-law rules of agency must be applied.

But managers have always been known in the general maritime law, as the above citations show, and the purpose of the maritime law of limited liability is to eliminate therefrom the effect of common-law rules of agency.

The Court of Appeals says (531),—

“It is clearly to be inferred from the evidence that Francombe was the sole manager of the steamer Noble; that appellant had employed him in that capacity; that he was invested with and he exercised the power of the corporation in selecting and employing the chief officers, such as the master and engineer of the vessel and in determining what contractual services the vessel should engage in; that he was held out by the company and was recognized by persons, such as brokers, dealing in respect of the ship and her services, as the person ultimately entitled in such matters to represent and bind the corporation.”

All the evidence on the subject has been set out and we ask this Court to notice that the above findings are stated as matter of inference only. At the same time, everything stated in the paragraph is far within the usual authority of ship's husband or managing owner and Francombe had, in point of fact, rather less than more.

See

Mitchell vs. Chambers, 43 Mich. 150.

The Court continues (531) :

“The initial arrangement for the carriage of the steel rails in question was held in abeyance until it received his ultimate approval.”

But this does not show any power in excess of that usually exercised by the ship's husband :

"The duties of a ship's husband are, in general,
* * * to make contracts for freight."

25 Ency. Law (2nd Ed.), 886, and citations.

Continuing from the opinion:

"And even the master would not complete the loading of the rails until he had first obtained the sanction and direction of Francombe."

This, with all deference, is too strong a statement under the evidence; but would the fact that the master so acted, in derogation of his own authority and express instructions to use his own judgment, add a particle to Francombe's authority or even tend to prove that he was more than a ship's husband?

"The duties of a ship's husband are, in general, to provide for the seaworthiness of the ship * * *."

25 Ency. Law (supra).

And so far as the matter of loading involved seaworthiness he would have been within the ordinary scope of the duties of a ship's husband if he had sanctioned and directed in such regard. He did not do so, as a matter of fact, but the finding or inference is no proof of extraordinary authority.

"In short," the Court continues, "it is not shown that final authority in the respects mentioned resided in any person except Francombe; and he may rightfully be treated as in fact the company's manager. Since the board of directors of the corporation must be presumed to have exercised a supervision over its business, the board is to be charged with knowledge of the extent of the authority usually exercised by its ship's manager and held to have acquiesced in his possession of such authority, even though it had not been given in express terms when he was employed as manager of the vessel."

In other words, the argument is that because it was not shown that final authority in "the respects mentioned"—i. e., (1) selecting master and engineer, (2) determining

contractual services or contracting for freight, (3) dealing with ship-brokers for cargoes, (4) telling brokers to take the Cambria cargo, (5) and (6) wiring master that he thought 3,000 tons too much—Francombe must be held to be the general manager of the corporation instead of the managing owner or ship's husband which he really was.

For there is not one of the respects mentioned in the opinion which is not far within the ordinary and familiar duties of ship's husband.

The Court also mentions, as important, the unproved statements that the Noble was the only vessel property of the appellant and that appellant was in possession of the insurance proceeds. Neither of these could be relevant in any respect to the questions before the Court, unless a corporation owning a single ship is to be treated differently from one owning several and unless the decision of this Court in regard to insurance was disregarded.

City of Norwich, 118 U. S. 468.

We repeat, that Francombe's authority, by the record and every legal inference therefrom, was only that of manager of the vessel, or ship's husband, and there is nothing to show that he ever assumed, or was held out as having, any other, or different, agency, or was in any respect a managing officer of the corporation.

There was no occasion to show that "final authority in any of the respects mentioned resided in any person except Francombe" because all the respects mentioned were within his ordinary functions as ship's husband.

The decision from which we appeal is therefore this, that a corporate ship-owner can not place the management of its ship in the hands of an employee as ship's husband or managing-owner without becoming liable for all his torts or contracts in that capacity; and it will follow, of course,

that individual owners are also personally liable, beyond limitation of liability, on account of such agents.

The questions 1 and 2, under the writ issued by this Court, are covered by the general inquiry whether the privity or knowledge of the ship's husband or manager deprives the owner of limitation of liability.

We now ask leave to discuss each question by itself.

I.

"Is an agreement for carriage of a designated cargo or a charter of a particular ship to carry a particular cargo when made by brokers authorized by an employee of the corporation, who exercised the powers of manager of the ship, the personal contract of the corporation so as to deprive it of its right of limitation under the statute?"

This presents the question of error in the courts below in holding that the contract was a personal one against which there could be no limitation of liability.

We submit hereunder:

The contract was not "personal" in the sense in which the expression is used in the decisions on the subject, because,

- (a) made by the manager or ship's husband;
- (b) superseded, as to this cargo, by the master's bill of lading.

The shipowner is not bound by the contracts of the manager beyond the value of his interest in the ship and freight; in other words, the manager or managing owner can not bind the owner personally, without express authority, by his contracts.

This is the decision in the following admiralty cases, in suits brought against owners on contracts of the manager:

Warner vs. Boyer, 74 Fed. 873;

Spedden vs. Koenig, 78 Fed. 504 (4 C. C. A.);

Woodall vs. Dempsey, 100 Fed. 653;

and also, in Michigan, at law,

Mitchell vs. Chambers, 43 Mich. 150.

See also

Hughes' Admiralty, 299;

Chase vs. McLean, 130 N. Y. 529;

Frazer vs. Culbertson, 6 Q. B. D. 93;

Briggs vs. Bennett, 108 Va. 404.

These appear to be in accordance with the general maritime law:

Marsden on Collisions (1904), 145:

"The Consolato del Mare, cc. 141, 142, provides that in certain cases the ship herself, and the managing owner, shall be liable to the merchant for the loss of his goods, but the other owners only to the extent of their shares * * *. Upon contracts with reference to the ship entered into by his agent, it seems that the shipowner was liable only to the ship's value * * *.

(146) As regards third parties, it seems that the liability of the shipowner upon contracts entered into by his agent, or committee in such an association, with reference to the ship, was limited to the value of the ship * * *; the principle which limited liability in the case of his contracts, probably applied equally to protect owners from unlimited liability for their master's torts."

And it may be remarked, in passing, that the same authority says of the modern English law (158):

"The liability of shipowners is limited in respect of damages recoverable in an action *upon the contract to carry* as well as in respect of a mere tort," and that *Carrier's Carriage by Sea* (1909), Sec. 27, lays down the same proposition.

The rule can be no different when the shipowner is a corporation.

The personal contract rule in regard to corporation must rest on the "privity or knowledge" of their "managing officers," in the sense that the contract must be made by them, and, of course, create an unlimited liability by its terms.

Francombe was not a managing officer of the corporation here. We have already shown his entire capacity and that it was entirely within the specifications of this question.

The corporation was organized under Act 232 of 1903 of Michigan. That law provides (Sec. 4) that the "stock property, affairs and business of every manufacturing or mercantile corporation shall be *managed* by not less than three directors"; they shall (Sec. 6) elect a president, vice president, secretary and treasurer and appoint such other officers and agents as the by-laws provide.*

This record does not show any appointment of Francombe as other than manager of the ship, but even if the conclusion of the court below be adopted—that he must be deemed manager of the corporation because it owned only a single ship—still, under Michigan law, the manager of a corporation is a mere agent and not a corporate officer.

"He is a mere agent, and the rules of agency, hereafter discussed, will be found controlling upon his authority in most instances."

Hamilton's Business Corporations in Michigan

Sec. 65;

Laird vs. Lubricator Co., 153 Mich., 52-55.

Francombe had no authority, express or implied, to bind the corporation to so extraordinary a contract as would deprive it of the protection of the limited liability law. The source and the limit of his powers was the ship itself and he had nothing to do with the other affairs or rights of the corporate owner.

*Sections printed at length in Appendix.

The contract mentioned by the court below was not the "personal contract" of the corporation because it was only the engagement of the manager of the ship and not of the managing officers of the corporation.

The "initial arrangement" or "verbal contract of affreightment out of which the present controversy grew" was superseded by the master's bill of lading.

This arrangement or verbal contract of affreightment (the expressions are those of the Court of Appeals) was in parol and originally made over the telephone by brokers in Cleveland.

McMorris (for Cambria), 37;

Mitchell (for Noble), 41.

Mitchell says:

"I called up Mr. Francombe and I said to him that I had chartered the Benjamin Noble to M. A. Hanna & Company, cargo of steel rails Conneaut to the head of Lake Superior, 80 cents * * * he said to take it."

A month later Francombe talked with McMorris and arranged that the amount might be divided into two shipments according to the judgment of the master.

Francombe, 272;

McMorris, 40-41.

These conversations never amounted to a charter of the Noble. The Cambria avers in its Answer (10) that it had no knowledge as to what steamer was to be furnished; it was only concerned with the transportation of its rails. How, indeed, could there be a charter when the boat was unknown or a contract of affreightment when the port of destination was not yet named? Whether or not there was any enforceable contract between the parties prior to delivery of the cargo might well be doubted, but, in any event, it is clear that the bill-of-lading superseded the pre-

liminary arrangement and was so understood by the parties.

"It constitutes the contract between the parties where there is no charter-party."

The Fri, 154 Fed. 333, 337.

Brown vs. Tons of Coal, 34 Fed. 913, presented a like situation in carriage on the lakes. Judge Severens said,—

"The principal controversy between the parties arose out of the question whether there was a preliminary contract which was in the nature of a charter-party, and which was therefore entitled to stand independently by itself, as attesting the terms and conditions of the agreement for transportation, or whether what transpired is to be regarded as mere preliminary negotiation resting in parol, and which was merged in or superseded by the bill of lading, which of course was in writing, and which it is claimed by the claimant operated to supersede the original or preliminary negotiation between the parties. * * * Now, in this case, if there had been a charter-party between the parties to the transaction, I should have no doubt that the contention on the part of the libellant was correct, and that the charter-party must be looked to as indicating the agreement between the parties; but where, as here, there was nothing rising to the dignity of a charter-party, nothing partaking of its substance, form, and effect, but the agreement, such as it was, between the parties, standing in parol, I think that the bill of lading, which was ultimately made, must be regarded as superseding the preliminary arrangements of the parties, and that a different rule would be applicable here from that which would apply if the parties had entered into a charter-party, or other definite agreement intended as the equivalent thereof. And it is to be noted in this case, and is a matter of considerable importance in determining this point, that the transaction between these parties did not have in contemplation the hiring or employment of vessels, or of any definite capacity of those vessels; the parties looked not so much to that as to the simple and only matter that they had in contemplation, which was the transportation of a certain quantity of coal from one place to another at an agreed price per ton. * * *

The bill of lading must be regarded as attesting the contract between the parties, and it is to be interpreted according to its terms, including also what is reasonably implied in it; for it is a maxim of the law that what is fairly implied in a contract is as much a part of it as though it were expressly written."

The Carlotta, 9 Ben. 1;

The Delaware, 13 Wall. 579.

That the bill of lading was understood and intended to be the contract in the case appears further from the following facts,—

1. It is the contract pleaded by the cargo-owner in its claim (8) and in its answer (9-10), and also specified in the opening statement of its counsel to the court (17) as of April 18, 1894.

2. The cargo owner has not sued on account of any breach of the original arrangement in March for 3,000 tons, but only for the loss of the rails actually laden under the bill of lading of April 18, and presents the bill of lading as the basis of its claim (11).

3. The contract which is described by the court below (528) is that of the bill of lading for it is only in that that the excepted perils and destination appear.

This bill of lading is the contract of the master of the ship and not the contract of the shipowner. On such contracts the general maritime law as well as the statutes give the shipowner entire limitation of liability.

We submit that question 1, as applied to the present case, should be answered in the negative.

II.

"Where a vessel is over-loaded by her Master so as to be unseaworthy, and the fact of over-loading is known to an employee of the owner who exercised the powers of manager of the ship, is such privity or knowledge that of the corporate owner so as to deprive it of the right of limitation of liability?"

The facts in this question are stated most strongly against the shipowner, which still denies, so far as it may now do so, both the fact of over-loading and the knowledge of the employee.

The question, however, is whether Francombe's knowledge of the master's over-loading charged the corporate owner with privity and knowledge in respect of the subsequent disaster on Lake Superior.

We have already shown that he was not a corporate officer but merely manager of the ship—the ship's husband or managing owner. His powers were less, and not greater, than those of the master, whose judgment was supreme, not only by law—

Boyd vs. Moses, 7 Wall., 316, 319;

Olsen vs. Co., 213 Fed., 18, 21;

The Loring, 48 Fed., 469;

Weston vs. Foster, 2 Curtis, 119;

Styria, 186 U. S., 1, 21;

but also under the arrangement between him and McMorris as to the quantity to be loaded.

Francombe's knowledge was not that of the corporation.

"The knowledge of an agent, whose powers are no greater than those of the master of a ship, is not notice to a corporation."

3 *Cook on Corporations* (6th ed.) Sec. 727 note.

"He was at most a mere employe of the corporation. He was not its general agent nor, so far as appears, had it any knowledge of his appointment. If he was an agent at all, *his powers were no greater than those of the master of a vessel, for whose negligence the owner is not liable, even though the privity or knowledge of the master exists.* The knowledge of Reardon was not the private knowledge of the corporation."

Craig vs. Continental Ins. Co., 141 U. S. 638, 647.

And, as Judge Brown said in the Craig case below (26 Fed., 798) :

"If the owner had been an individual instead of of a corporation it would have been clearer that Reardon did not stand in his place, but the law applicable to the case would be the same."

It is necessary to determine whether Francombe's acts or omissions constitute "privity or knowledge" within the meaning of the law.

The facts upon which the present decree rests are these :

1. He was manager of the ship ;
2. He put the ship, in all respects seaworthy, in charge of a competent master ;
3. He arranged for the carriage of 3,000 tons of rails in such shipments as that master thought proper ;
4. He instructed that master to load according to his judgment ;
5. He left the loading to the judgment of that master and the Cambria employees ; when she left Conneaut he had no knowledge of the amount of the load ;
6. He was on board the ship at Detroit, during the voyage, and did not interfere with that master's judgment ;
7. The ship subsequently disappeared in a great storm on Lake Superior.

Under these facts, the question is confined to Francombe's failure to stop the voyage at Detroit, because the decree rests, in the final analysis, upon the propositions that he ought to have known that the ship was unseaworthy there and that he had the authority to supersede her competent master there.

The record contains no testimony showing any unseaworthiness for the proposed voyage at Detroit.

Francombe's conduct there must be tested by what he knew, especially in a case charging personal responsibility for so great a loss of life and property.

The facts apparent to him at Detroit were these:

1. The ship had made the voyage across Lake Erie, through a hard blow, without any trouble.

Morrison, 220.

2. The master reported that she had behaved first rate and was sorry he had not put on more rails.

Francombe, 280;

Craig, 238.

3. The United States inspectors inspected her there; the steering-gear was arranged to their satisfaction; they considered her seaworthy for the trip; and they would not have permitted her to proceed if they had considered her unseaworthy.

Francombe, 284;

Hensell, 222, 224, 228;

Purris, 230, 232.

4. Francombe himself considered her in good shape for the trip—"better shape than most of the boats I have been riding on for forty years."

Francombe, 284.

5. The seaworthiness of the Noble, for the voyage in question, tested by the condition in which she left Conneaut and appeared at Detroit, is affirmed by

every witness of practical experience on the Great Lakes, in the case.

U. S. Inspector Gould, 236;

Captain Budd, 240;

Captain Montgomery, 244;

Captain Garu, 250;

Captain Craigie, 255;

Captain McKenzie, 261;

Captain Benham, 316;

Captain Goodrow, 194;

Edward Gaskin, 295;

Alexander Hynd, 311.

The test is what Francombe knew or ought to have known at Detroit. If he had stopped the voyage there he would have overruled the judgment of her master and crew and also that of the United States inspectors, on the spot, and, as far as this record shows, no competent lake witness could have been obtained to support such a proceeding.

We submit that Francombe's action or inaction was not such as ought to deprive the shipowner of the protection of the statute.

The courts below held that the subsequent loss in a great storm under unknown circumstances was with the privity and knowledge of the corporation.

These words have never been clearly defined, but can not be charged against a corporation unless they are chargeable to its managing officers. Francombe was merely an employee. His experience and general competency are not questioned (*Opinion*, 422).

There is no evidence to sustain the finding of the court below which treated him as the corporation's *alter ego*, but if he were, it does not follow that limitation of liability should be denied. At the most, he was negligent and it is

only negligence which may be properly attributed to the corporation, through him—not privity or knowledge of the disaster, or actual intent to cause the loss.

None of the owner's officers were on the *Noble* nor did any of them direct, interfere with or approve her loading or subsequent navigation. They used due diligence in securing men of experience and ability to take charge of her. The overloading did not arise or continue with their privity or knowledge. Francombe was not charged with any duty as to the loading of the cargo. That properly appertained to the master. He undoubtedly believed that the ship was properly loaded and perfectly seaworthy. Such was also the opinion of many other competent men. The cause of the loss is still unknown and it is only a weak presumption which attributes it to her load. The loading and all her subsequent navigation were wholly within the province of the master and the loss ought not to be held to have been occasioned with the concurrence and participation of Mr. Francombe or of the managing officers of the corporation. The record presents no legal foundation for such a result, and question 2 should be answered in the negative.

La Bourgogne, 210 U. S. 95;

S. S. Co. vs. Hill, 109 U. S. 578;

The Republic, 61 Fed. 109;

The Faxon, 75 Fed. 312;

Quinlan vs. Pew, 56 Fed. 111;

Palmer, 191 Fed. 79, 202 Fed. 1023.

III.

"In view of the fact that in Section 18 of the Act of June 26, 1884, the words 'incurred without his personal privity or consent' were intentionally and purposely omitted by Congress, and the right of limitation was expressly given to cover 'all debts and liabilities,' and that Section 30 of the same Act expressly repeals 'all laws and parts of laws in conflict' therewith, was not the language of Section 3 of the Act of 1851 repealed so that the limitation of liability now in force under the statute of June 26, 1884, covers all debts and liabilities except for wages, irrespective of any privity or knowledge concerned in the duty or liability?"

The answer to this question appears in *O'Brien vs. Miller*, 168 U. S., 287, 303:

"Section 4283 was amended by the act approved June 26, 1884, c. 121, 23 Stat. 53, 57, *so as to do away with the restrictions* upon the character of debts and liabilities against which the limitation might be asserted."

This plainly states the effect of the enactment of section 18 and the repealing clause which follows it and no other answer could be possible in view of the facts stated in the question.

Those facts are matters of history and public record and cannot be disputed.

The words "incurred without his personal privity or consent" were intentionally and purposely stricken out of the proposed law by Congress. The original draft read as now; the Senate proposed to amend it by inserting these words; the House resolved not to concur in the amendment; the question went to a joint conference committee;

the committee reported an agreement to strike out the amendment; the report was adopted by the Senate and the House and the bill was then enacted by Congress after striking out the words "incurred without his personal privity or consent."

There was also enacted section 30 which expressly says:

"All laws and parts of laws in conflict with this act are hereby repealed."

Neither *Pendleton vs. Benner Line*, 246 U. S., 353, nor *Luckenbach vs. Sugar Refining Co.* (Dec. 9, 1918) are opposed to an affirmative answer to this question. They hold that the limitation acts do not apply to personal contracts—in each case an express warranty of seaworthiness by the shipowner in person. The statute as enacted contemplates obligations of the ship as distinguished from the personal obligations of the owner. And by "obligations of the ship" is meant those liabilities which arise through the agents to whom the owner has entrusted her and whose acts clothe her with the personality described by this Court in *Tucker vs. Alexander*, 183 U. S., 438:

"She acquires a personality of her own; becomes competent to contract, and is individually liable for her obligations, upon which she may sue in the name of her owner, and be sued in her own name. Her owner's agents may not be her agents, and her agents may not be her owner's agents."

In *Richardson vs. Harmon*, 222 U. S., 96, the Court said of this section:

"That it was intended to limit the owner's liability in respect of debts contracted on account of the ship is plain."

This obviously recognizes that "privity or knowledge" was excluded from the statute because liability for debts contracted can not exist without privity or knowledge. The act could not limit in respect of such debts if the restriction as to privity or knowledge were implied into it:

every valid contract includes the idea of the knowledge of the parties and implies a privity between them.

It therefore follows that the words can not now be implied into the section for the purpose of enforcing liability *ex contractu*; and *a fortiori* they should not be implied as to liabilities *ex delicto*.

Under the statute of 1884 the question of privity and knowledge is immaterial and, we submit, the question requires such an answer. It would not follow, however, that the shipowner would be protected against his own express contracts or intentional wrong doing; these, of course, would still stand on their own footing. It has never been contended, as far as we can ascertain, that the law afforded any special immunity against these. Literally construed, and in accordance with the expressions of this Court in *O'Brien vs. Miller* and *Richardson vs. Harmon*, above quoted, the statute is free from the still undefined and undefinable restriction as to "privity or knowledge" and affords a reasonable protection to the shipowner against all liabilities which he does not personally incur. If he chooses to act personally in affairs of the ship, he must stand the consequences; if, as in the case at bar, he is careful to put the ship and her affairs into the hands of competent agents, he should be protected against the loss of more than the capital invested; and this, we submit, is what will follow from an affirmative answer to this question 3.

IV.

On the record, the loss was without petitioner's personal fault or privity and the conclusions below are open to review here.

There is no evidence, other than an inference from the disaster, that the Noble was unseaworthy from overloading at Conneaut or Detroit.

Both opinions of the district court show that its finding of an overload at Conneaut was based upon the appearance of the ship at Sault Ste. Marie one week later.

Claimant's Conneaut testimony is that of the seven men who loaded the ship for the Cambria Company,—Roberts, dock foreman (61); Goldsmith, labor foreman (68); Klumph, machine foreman (77); Frank, whirly operator (80); Howard, machine man (81); Koase, laborer (83) and Forsti, laborer (86). Its Detroit testimony is that of Neusbaumer, an electrician (322) and Peterson, a millwright foreman (331). Of this testimony the court says (429):

"The testimony as to her draft at Detroit is even more unsatisfactory than that at Conneaut," and a careful reading of both opinions will show that if this were the only evidence in the case the court would never have found that the boat was overloaded. For all this testimony is merely the casual impression of the landsmen that the Noble seemed very deep in the water—which was the very appearance her design called for (Gaskin, 301), and the direct evidence of careful observers at Detroit had shown the court, beyond contradiction,

that she was entirely seaworthy and had ample freeboard there.

Hensell (U. S. Insp'r), 244;

Capt. Craig, 239;

Capt. Francombe, 284.

And the testimony of shipbrokers, masters of long experience in similar ships, marine experts and classification authorities, on the part of the petitioners, approves the boat in her condition at Conneaut and Detroit, as entirely seaworthy for the proposed voyage (Goodnow, 202; Budd, 240; Montgomery, 244; Garu, 251; MacKenzie, 261; Mitchell, 45; Craigie, 256; Gaskin, 301; Hynd, 311; Benham, 316; Rinn, 413; Herriman, 212; Gould, 233).

What controlled the district judge was the government record at Sault Ste. Marie, which showed her draft there as 18-1 (430). At Detroit it was about 16-8 (284) and it would normally lessen as she burned her fuel on the upward trip.

But it is wrong to conclude, as the courts below have done, that she was overloaded at Detroit because she had an over-draft at the Sault.

If the Sault testimony is correct, something had happened to the ship after she left Detroit. She had considerable ice to work through (284); the master may have filled her tanks with water for some purpose (245, 299); the owner could never know and cannot be charged with any notice or knowledge of the situation there. If the master and crew and government officials at the Sault had any suspicion about her seaworthiness for continuing the voyage, it was never manifested by any act, complaint or warning. The master was in full charge. If he thought her overloaded, his duty required him to stop there and not go on until the matter was corrected. If fault there

were, it was his alone in leaving the Sault and no charge against the owner can rightfully be based on his conduct. The entire matter had been placed in his control, as master, from the beginning, but at the Sault it was conclusively so.

At Detroit the ship was seaworthy in all respects; there is no evidence to the contrary; and for what happened after she left there the owner cannot be held personally responsible.

The findings below to the contrary ought not to be considered as findings of fact, because they are merely deductions from evidentiary facts in issue.

"When the judgment of the court below is based on a deduction from other facts, the conclusion, being the result of reasoning, is subject to revision and to correction, if erroneous."

2 Ruling Case Law, Sec. 174, 208;

McConnomy vs. Reed, 152 Pa. St. 44;

Dillingham vs. Moran, 101 Fed. 935, 936;

Trust Co. vs. Seltzer, 227 Pa. St. 416;

Nolan vs. Co., 70 Conn. 159; 43 L. R. A. 323;

Agency vs. Fleming, 44 L. R. A. 283;

Nichols vs. Peck, 70 Conn. 439; 40 L. R. A. 83;

Beach Modern Equity Practice, par. 711.

We submit that the real basis of the decree below is the breach of contract to carry and that it is not to be sustained on any theory of personal negligence of the corporation. The courts below erred in holding that there was any personal liability of the corporation for this disaster and the decree now under review should be reversed.

Respectfully submitted,

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KIRLIN, WOOLSEY & HICKOX,

MILLER, CANFIELD, PADDOCK & PERRY,

Proctors for Petitioner.

APPENDIX.

Sections of Michigan statute cited on page 27; Act 232 of 1903.

An Act to revise and consolidate the laws providing for the incorporation of manufacturing and mercantile companies or any union of the two, and for the incorporation of companies for carrying on any other lawful business, except such as are precluded from organization under this act by its express provisions, and to prescribe the powers and fix the duties and liabilities of such corporations.

Sec. 4. The stock, property, affairs, and business of every manufacturing or mercantile corporation shall be managed by not less than three directors, who shall be chosen annually by the stockholders, at such time and place as shall be provided by the by-laws of said corporation, and who shall be stockholders, and shall hold their offices for one year, and until others shall be chosen in their stead.

Sec. 6. The board of directors shall elect one of their number to be president of the corporation and board, and one or more of their number to be vice president, and shall also choose a secretary and treasurer, and assistants if deemed necessary. The secretary and treasurer shall reside and transact the corporation's business at its office within this State, unless the articles, or an amendment thereof duly made, provide for the location of the principal office of the corporation without this State. The directors shall appoint such other officers and agents as the by-laws of the corporation shall prescribe, who shall hold

their offices according to their contracts, or until others are appointed in their stead. If the stockholders so direct the same person may hold the office of secretary and treasurer.

Sec. 10. A majority of the directors of every manufacturing or merchantile corporation convened according to the by-laws, shall constitute a quorum for the transaction of business; and the stockholders holding a majority of the stock, at any meeting of the stockholders, shall be capable of transacting the business of that meeting, except as herein otherwise provided; and at all meetings of such stockholders each share shall be entitled to one vote. Stockholders may appear and vote in person or by proxy duly filed.



MAR 14 1919

JAMES D. HANCOCK, R.

Supreme Court of the United States

OCTOBER TERM, 1918.

CAPITOL TRANSPORTATION COMPANY,

Petitioner,

against

CAMBRIA STEAM COMPANY,

Respondent.

No. 231.

REPLY BRIEF FOR PETITIONER.

J. PARKER KIRLIN,

Of Counsel.

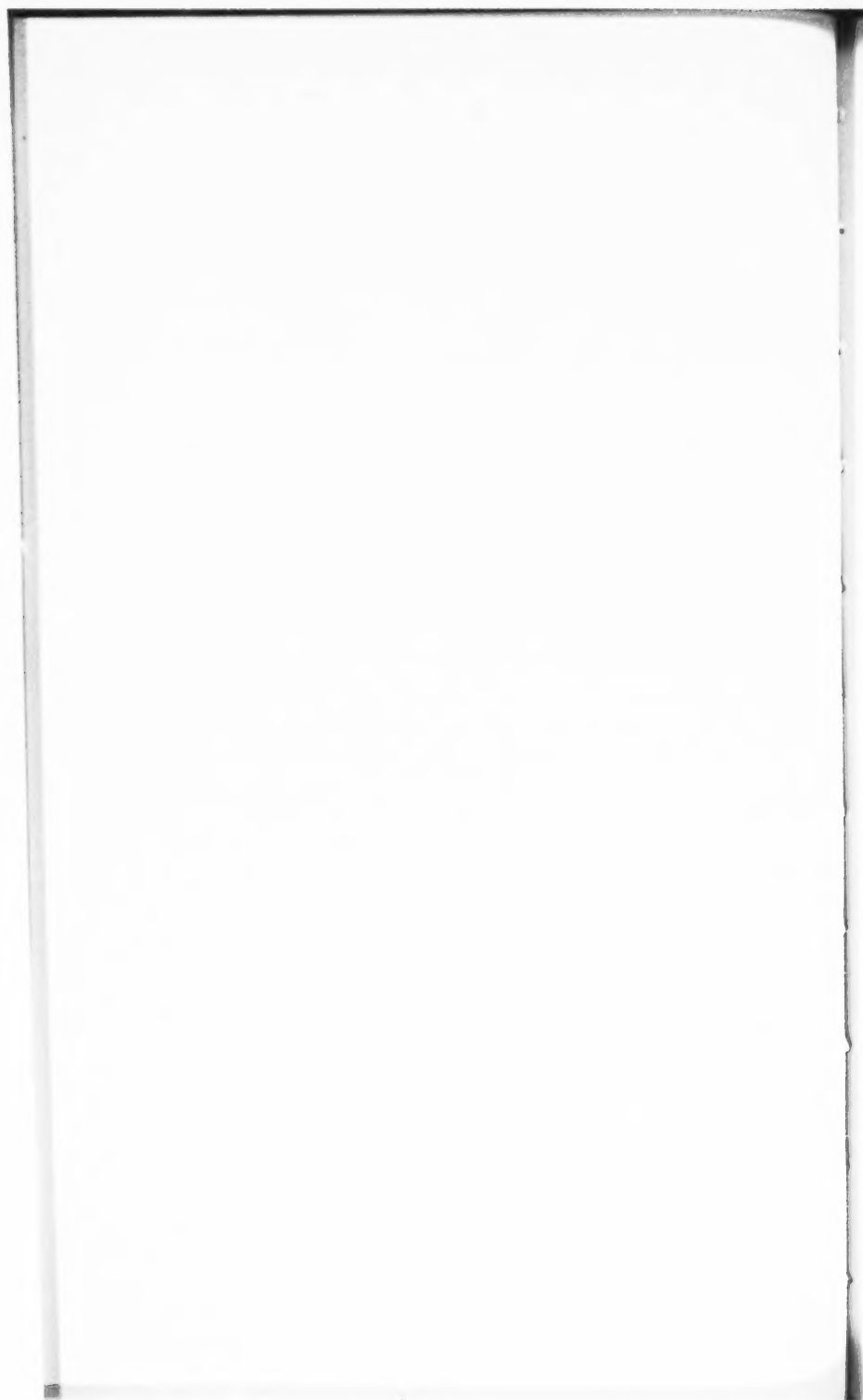
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SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1918.

CAPITOL TRANSPORTATION COM-
PANY,

Petitioner,

vs.

CAMBRIA STEEL COMPANY.

Respondent.

No. 231.

REPLY BRIEF FOR PETITIONER.

I.

There is no foundation in the record for the contention that the cargo which was lost with the *Benjamin Noble* was carried under a personal contract between the Cambria Steel Company and the Capitol Transportation Company, petitioner which should defeat the right to a limitation of its liability under the rule enunciated in the *Benner Line v. Pendleton*, 246 U. S. 353, and *McCahan Sugar Refining Company v. The Luckenbach*, 248 U. S. 139.

In the considered opinion of the District Judge the statement appears that a contract was made between the Capitol Transportation Company, represented by Mr. Fran-

combe, and the Cambria Steel Company represented by Hanna & Company, for the transporting of these rails on the Noble at a rate of 80¢ per ton. P. 438. Further along in the opinion, the Court said: "So he (Francombe) stands so far as this question is concerned in the place of the corporation, and his faults are faults of the corporation and binding upon the corporation. *Great Lakes Towing Company v. Mills Transportation Company*, 155 Fed. 11; *Benner Line v. Pendleton*, 217 Fed. 497".

These views apparently received the sanction of the Circuit Court of Appeals. Pp. 531-532.

As a matter of fact no contract was ever signed by the Capital Transportation Company or by John A. Francombe, Manager of the ship, for the transportation of any particular quantity of rails, for the voyage on which the ship was lost.

Negotiations for the cargo were started by William A. Sproull, Traffic Manager of the Cambria Steel Company, who from his office in Pittsburgh made application to Hanna & Company, his own agents in Cleveland, for the transportation of 3,000 tons of rails. *Sproull*, pp. 20-23. These negotiations were entirely in writing and are as follows (Exhibit 3, pp. 480-482).

Cambria Steel Company
Office of Traffic Manager.

Wm. A. Sproull, T. M., Oliver Building, Pittsburgh, Pa.

MARCH 5, 1914.

Messrs. M. A. Hanna & Company, Cleveland, O.

Gentlemen: We have an order from the Great Northern Ry. Company for 3,000 tons of rails, not exceeding 33' in length, which we are obligated to get off on the very first boat that can go through after the opening of navigation. I do not know yet whether we will want to move these rails from Cleveland or Conneaut, but the probabilities are that on account of the poor facilities at Cleveland as compared with Conneaut, we will have to load from the latter port.

There is a possibility that this order may be increased to 5,000 tons but there is nothing definite in regard to this feature as yet.

Will you please investigate and advise at the earliest possible moment what is the best rate you can secure on this tonnage?

Do you think there is any possibility of our being able to get a boat out prior to, say April 15?

Yours truly,

WM. A. SPROULL
Traffic Manager.

M. A. Hanna Co.

Cleveland, O., March 6, 1914

Great Northern Rails.

Mr. William A. Sproull, T. M., Cambria Steel Company, Oliver Building, Pittsburgh, Pa.

Dear Sir: Replying to your favor of the Fifth instant relative to 3,000 tons of 33' rails to be floated as soon as boats can get through, beg to advise we can float this tonnage for 80c.

We have up with the brokers now the question of getting a boat now wintering at Cleveland, although she would not be able to load before April 15, because of hull insurance. It is not likely that boats will be able to get through the Soo before that date.

Trusting that you may be able to secure the business with this freight rate, we beg to remain,

Yours very truly,

M. A. HANNA & Co.

By C. M. Morris.

Cambria Steel Company
Office of Traffic Manager

Wm. A. Sproull, T. M., Oliver Building, Pittsburgh,
Pa.

March 9, 1914

M. A. Hanna & Co., Cleveland, O.

Gentlemen:

Great Northern Rails

I am in receipt of your esteemed favor of the 6th, by Mr. McMorris, relative to 3,000 tons of 33' rails to be floated to West Superior on the opening of navigation.

I note that you will be able to float the 3,000 tons in one cargo at 80c. a ton. In accordance with your advice, we will arrange to have the rails at Conneaut so that the vessel can begin loading on the 15th of April, if she is ready on that date.

Yours truly,

WM. A. SPROULL,
Traffic Manager.

M. A. HANNA & Co.,
CLEVELAND, O., MARCH 10, 1914.

MR. W. A. SPROULL,
Traffic Manager,
Cambria Steel Company,
Pittsburgh, Penna.

Dear Sir:

GREAT NORTHERN RAILS.

We have your favor of the 9th inst., advising that you will have 3,000 tons of 33 ft. rails at Conneaut for loading in vessel on the 15th of April.

In accordance with this advice, we have today chartered the Steamer *Benjamin Noble* at 80¢ to be at Conneaut on that date. At your convenience, please advise how you wish bills of lading and notices of shipment handled, and obliged,

Yours very truly,

M. A. HANNA & Co., Agents,
by C. McMorris.

CAMBRIA STEEL COMPANY,
Office of Traffic Manager,
Wm. A. Sproull, Traffic Manager,
Oliver Building, Pittsburg, Pa.

MARCH 11, 1914.

MESSRS. M. A. HANNA & COMPANY,
Cleveland, O.

Gentlemen:

I am in receipt of your favor of the 10th, advising that you have secured the steamer *Benjamin Noble*, to load 3,000 tons of 33' rails at Conneaut, beginning April 15th, at 80¢ per gross tons.

Further correspondence in reference to details, etc., will be carried on by my Johnston office.

Yours truly,

WM. A. SPROULL,
Traffic Manager.

Exhibit 3, pp. 480-482.

Hanna & Company acted in the matter through their chartering agent, Charles McMorris. He testified that he made an arrangement for the transportation of the rails, which he called a charter of the vessel, with Captain Mitchell, of the Mitchell Company, Cleveland, Ohio, who were vessel brokers. P. 37. He told Mr. Mitchell to get him a boat to float 3,000 tons in one cargo. P. 37. In the third conversation, he says Mr. Mitchell called him up, and that he, (Mitchell) had secured the *Noble*. Mr. Mitchell advised him that the shipment would go forward on the *Noble*. McMorris, further, said:

“Q. Did you know anything about her capacity as to tonnage or size or anything of that kind? A.

Approximately I knew she would carry something near that amount. P. 38."

He dealt entirely with Captain Mitchell, and told Mitchell he wanted a steamer to carry that amount. P. 38. That the arrangement was not a firm one to carry the full 3,000 tons, appears from the following passage in his testimony:

"Q. In ordering cargoes of ore or rails or coal, or any kind of cargoes which you are familiar with, is it not a fact that there will be usually more ordered forward than the boats will carry? A. So far as my practice goes it does not make any difference; I have a great many thousands of materials on wheels all the time, and what is left goes on another boat. The only time I clean up is at the end of the season.

"Q. And the mere fact there may be a little more ordered forward than the boat will carry that does not mean anything? A. It does not mean anything to me. P. 39."

He admits that an arrangement was subsequently made that a quantity of the rails short shipped should be taken forward by the *Noble* on her next trip. P. 41.

Mr. Mitchell's testimony in regard to the negotiation is as follows:

"A. Mr. McMorris came in the office one day and he said he was going to have some rails to float from Conneaut to the head of Lake Superior. I said I was very glad of it, that we had the *Noble* there with a load of grain, and I could furnish the *Noble* to him the first trip out, which met with his requirements. He said what will you take them for? I told him I

would float them at 80¢. A few days afterwards he came back and he said go ahead.

“Q. What was said about the quantity of rails?
A. He said he had 3,000 tons.

“Q. And what did you do if anything, with Mr. Francombe? A. I called Mr. Francombe up on the long distance telephone and confirmed the charter.

“Q. What do you mean by confirmed the charter? Tell us what you said to Mr. Francombe and what he said to you? A. I called Mr. Francombe up and I said to him I had chartered the Benjamin Noble to M. A. Hanna Company, a cargo of steel rails, Conneaut to the head of Lake Superior, 80¢.

“Q. *Did you tell him the quantity she was expected to carry?* A. *To Mr. Francombe?*

“Q. *Yes.* A. *No, sir.* P. 42.”

It appears from this that Mr. Mitchell did not tell Mr. Francombe the exact quantity that was to be taken but that, in general terms, the understanding was that the steamer was to carry a full load. It was Mr. Mitchell's understanding “that the master of the Noble had absolute control to take just what rails he saw fit, whether it was the whole, or two-thirds or one-half.” P. 44. He, however, was acquainted with the capacity of the Noble and stated: “There was no question in my own mind whatever and there is not today, that she would take 3,000 tons of rails and more.” P. 45.

Mr. Francombe, the Manager of the ship, testified:

“Q. What did you have to do with chartering for her last load? A. Was it the last load of grain?

Q. No, the last load of rails that she carried?
A. What did I do with it?

Q. What did you have to do with the charter?
A. Mr. Mitchell obtained the charter.

Q. The Mitchell Company of Cleveland? A. Yes, sir.

Q. What was the first you heard of it? A. I think it was around the fore part of March, that he called me up by telephone and he had some rails in view.

The Court: That is Al Mitchell?

A. Yes, sir, Al Mitchell. He wanted to know whether I would take them and said yes. I told him I had been figuring with Boland but we had not closed the thing.

Q. This was over the telephone? A. That was over the telephone. P. 269."

This corroborates the testimony of Mr. Mitchell that nothing was said as to the amount, but that the understanding was that the ship was to take a load.

The first mention of quantities came in a telegram and a letter, dated March 10, from the Mitchell Company to Mr. Francombe. *Exhibits 25-26*, p. 270. The telegram and letter are as follows:

"CLEVELAND March 10, 1914.

John A. Francombe, c/o Capital Brass Company,
Cor. Franklin and Chene Streets, Detroit.

This confirms the Noble. 3,000 tons rails. First trip, Conneaut, Duluth 80. Signed, Mitchell Company."

"CLEVELAND, Ohio, March 10, 1914.

Mitchell Company, lake transportation, Rockefeller Bldg.

Mr. John A. Francombe, c/o Capital Brass Company, corner Franklin and Chene Streets, Detroit,
Dear John: We were unable to wire yesterday in re-

ply to your message about Ben Noble, but at 10:30 this morning telegraphed you as follows: 'This confirms Noble, 3000 ton rails, Conneaut to Duluth, first trip 80'.

These rails will be shipped by M. A. Hanna Company. In talking with them this morning they say they want to make the shipment the first trip this spring, and will endeavor to have them forwarded in due time.

Yours truly,

ALFRED MITCHELL." P. 270.

No reply appears to have been sent to those communications. The "message" referred to in the letter apparently referred to the telephone conversation above mentioned, *Francombe*, p. 270, in which nothing had been said as to the exact quantity of the rails. *Mitchell*, p. 42.

Nothing had been said, up to that time, in any of the letters or testimony whether long or short tons were intended.

Mr. Francombe apparently understood that, in accordance with the general practice he was not binding the ship to carry more rails than the captain might determine would constitute a proper load.

He went to Cleveland on the 9th of April, and called on Mr. McMorris, of Hanna & Company. P. 271. He asked Mr. McMorris about the rails and whether he had them all in, and Mr. McMorris said there were 3,000 tons in.

"Q. What did you say to him? A. I told him we had a new captain in this boat and I didn't know how many tons he would take. Now I said, he may take 3,000 tons and he may only take 2,800, but I said it is all up to the captain. Why, he said, we

chartered her for 3,000 tons through Mitchell & Company, I said that does not make any difference. I said we are carrying the insurance on that boat, and we dassent interfere with our captain. I said I never done it yet. I said I don't know how much the captain will take when he gets down there. He asked me how much I thought he would take. I told him I could not tell him, but I said whatever he leaves there I will pick them up the next trip; I will have the captain come around and pick them up the next trip.

Q. What did Mr. McMorris say to that? A. He said that was all right, if I would surely do it.

Q. What did you say regarding the next trip? A. I told him I would pick them up the next trip, I would have the boat come around there, I expected she would come to Oswego, and she would go over there and fuel up." * * *

"Q. What did Mr. McMorris say to that? A. Mr. McMorris said that was all right. Now he said I want you, the third trip I want to load her again. He said I wish you would find out how much this captain wants. I said all right, I will find out when he gets up to Detroit with his cargo." P. 272.

The final understanding, therefore, was that the steamer would take, on the first trip, such a quantity of the rails as the Captain might determine would constitute a proper load, and carry forward the remainder of 3,000 tons on the next following trip.

Francombe saw the captain of the steamer, on the same occasion, at Mitchell's office and gave him the following instructions:

"He came up there, and I told him about the rails first. I said 'Captain, there is 3,000 tons of rails down there; when you get down there *you put*

on what you think your boat will carry, and when you get that on, I said, don't take any notice of what Captain Mitchell or the dock men say to you; you are master of that boat.' Now I said, I don't know whether she has had 3,010 or 3,015. The log book is there in the safe. I gave him the combination of the safe, to get the log book out so he could look for himself, and what water she was drawing. He said all right." P. 275.

The reference to the log in the safe meant that, in accordance with usage, a log is kept and left on board the vessel, showing what cargoes she has carried year in and year out and the draft of water that she has had with the various cargoes that she has carried. *Mr. Mitchell was careful to advise the master that he had an absolute discretion as to the amount of rails that he should carry, and that he was to pay no attention to what either Mr. Mitchell or the dockmen might say to him as to the amount of his load beyond the amount that he (the captain) thought the boat would carry.* P. 275.

The only further communication passed on the subject was a telegram from the master reading as follows, p. 378:

"Commeaut, April 7, 1914.

"John Francombe, 649 East Congress St., Detroit, Mich.:

Will be loaded Saturday noon. Mitchell wants 3,000 tons to go if possible. Please advise. (Signed) EISENHART."

This message was received by Mr. Francombe on Saturday when he came home at noon. P. 278. Satur-

day was the 18th, on which day the Court found the vessel sailed from Conneaut. P. 429. Mr. Francombe telephoned his reply to the telegraph office to be telegraphed to Cleveland. He says, I think I replied, "Three thousand tons too much. Take all you possibly can' ". A copy of the telegram subsequently furnished from the telegraph office but which was never drawn up nor signed by Mr. Francombe bears the erroneous date of Friday, April 17. P. 279.

The vessel had carried more than 3,000 tons of rails on previous occasions, pp. 517-522, but as this was the Captain's first trip on the ship, Mr. Francombe evidently thought it best to caution the Captain against any pressure from the shippers to take too large a load on the first voyage of the season.

There is nothing in the record, however, indicating whether Captain Eisenhart actually received this telegram or not.

The only written document covering the cargo that was signed by anybody representing the ship, or the owner, was the bill of lading introduced by the libellant as *Exhibit 1*, p. 462. This document recites the shipment of 2951 gross tons, and 840 lbs., of steel rails upon which the freight was to be 80¢ per gross ton, and was signed "Captain J. Eisenhart." It was endorsed "Cambria Steel Company by J. L. Replogle, Vice President and General Manager of Sales."

Under the authorities cited in the principal brief, pp. 28-29, the earlier negotiations should be treated merely as preliminary to the contract of carriage, constituting in reality nothing more than an allocation of the steamer

for the service, and as superseded by the bill of lading signed by one party and endorsed by the other, which really constituted the contract of carriage.

There is no foundation, therefore, for the claim that such rights as the owners would otherwise have had, under the statute, for a limitation of their liability was lost by any personal contract constituting a warranty, or that they deprived themselves, by any personal undertaking, of rights to limitation of liability to which they would otherwise be entitled by reason of the breach, if there was one, of the contract entered into for the transportation of the goods.

The question then is what rights of limitation of liability belong to the petitioner, in these circumstances?

II.

The first inquiry is under what statute is the limitation of liability sought by the petitioner to be determined?

The petition based the right to limitation, in the customary form, on §§ 4283, 4284 and 4285 of the Revised Statutes, and the rules of this Court, and claimed "also *the benefit and protection of Section 18 of the Act of Congress of June 26, 1884, and the amendments thereto, as enacted by Congress.*" P. 3.

The petitioner claims, that it is entitled, under Sections 18 and 30 of the act of 1884, to a limitation of its liability to the value of the vessel and freight pending, *irrespective of any question of privity or knowledge.*

The Act of 1884 23 St. 53 stands in contrast with R. S. Sec. 4283, as follows:

Sec. 4283 R. S.

The *liability of the owner of any vessel* for an embezzlement, loss or destruction by any person of any property, goods or merchandise shipped or put on board of such vessel, or for any loss, damage or injury by collision, or for any act, matter or thing, loss, damage, or forfeiture, done, occasioned or incurred *without the privity or knowledge* of such owner or owners, shall in no case exceed the amount or value of the interest of such owner in such vessel, and her freight then pending.

Sec. 18 of Act of June 26, 1884.

The individual *liability of a ship owner* shall be limited to the proportion of any or all debts and liabilities that his individual share of the vessel bears to the whole; and the aggregate liabilities of all the owners of a vessel on account of the same shall not exceed the value of such vessel and the freight pending; Provided, that this provision shall not affect the liability of any owner incurred previous to the passage of this Act, nor prevent any claimant from joining all the owners in one action; nor shall the same apply to wages due to persons employed by said ship owners.

Sec. 30. All laws and parts of laws in conflict with the provisions of this Act are hereby repealed; and this Act shall take effect and be in force on and after July 1, 1884.

It is, of course, understood that the opinion of the Court, delivered by Mr. Justice Lurton, in *Richardson v. Harmon*, 222 U. S. 96, appears to rule this point adversely to the petitioner. At p. 103 the statement is made:

"No purpose to repeal or qualify any of the terms of the existing law was declared, nor is this section declared in words to be an amendment of that law."

At p. 305 the opinion further states:

"Neither is it necessary to conclude that the section in question [Section 18] is a repealing act as to any of the qualifications of the preceding limitations found in Section 4283 et seq., of the Revised Statutes. To so hold would be to attribute to Congress a wider purpose than we have any reason to suppose—that of extending the benefits of Section 4283 et seq. regardless of the owner's knowledge or privity."

The question whether the Act of 1884 repealed the qualification "without the privity or knowledge of such owner" in R. S. § 4283, was not, however, in issue in that case. No question of privity or knowledge was raised.

The circumstances of that case were, shortly, these: An action had been brought against two of the owners of the barge *Crete* for collision damage to a bridge at Toledo. The owners of the barge thereupon filed a petition for limitation of their liability. The owner of the bridge appeared and excepted to the jurisdiction of the Court, on the ground that the collision was with a structure on land, and was not within the Admiralty jurisdic-

tion. That exception was sustained. The only point actually involved on the appeal to this Court was whether Section 18 of the Act of 1884, which extended the right of limitation to "any or all debts and liabilities" included a liability for collision with a bridge. The decision was that liabilities, in the meaning of this section, included liabilities for damage done on land, and the decree was accordingly reversed.

No question as to the privity or knowledge of the petitioner was before the Court.

Nor was the point involved in the decisions of *Benner Line v. Pendleton*, 246 U. S. 353, and *Luckenbach v. McCahan Sugar Refining Co.*, 248 U. S. 139. Both those cases turned on the provisions of a personal contract of warranty of the seaworthiness of a ship, which it was held precluded the shipowner from claiming the benefit of a limitation of liability.

The Court has ruled, in *Bardes v. Hawarden Bank*, 178 U. S. 524, 534, "that any opinion given here or elsewhere cannot be relied on as a binding authority, unless the case called for its expression. *Carroll v. Carroll*, 16 How. 275, 287."

It is believed that the present is the first and only case in this Court in which the point now sought to be raised has been necessarily involved, and thus presented for actual decision.

The petitioner therefore feels justified in asking reconsideration of this point.

The Act of June 26, 1884, 23 Stat. 53, entitled "*An Act to remove certain burdens on the American Merchant Marine and encourage the American foreign carrying trade, and for other purposes*," contains thirty sections.

The first 17 sections have to do chiefly with provisions with regard to seamen, and the duties of Consuls in regard thereto.

Section 18 contains a provision with regard to limitation of liability of shipowners, extending it without qualification to "*any and all debts and liabilities*," except those which were contained in the proviso.

Sections 19 to 29 contain provisions with regard to masters and officers of ships, tonnage dues, shipping commissioners, and fees of inspectors.

Section 30, which apparently was not called to the attention of the Court and was not noticed in the opinion of *Richardson v. Harmon*, provides:

"All laws and parts of laws in conflict with the provisions of this Act are hereby repealed, and this Act shall take effect and be in force on and after July 1, 1884."

This section suggests at least an inaccuracy in the opinion in *Richardson v. Harmon* at p. 103 in respect of the statement that "*no purpose to repeal or qualify any terms of the existing law was declared*."

Petitioner claims that the qualification upon the right of limitation under Section 4283 R. S., which provides that it does not extend to liabilities incurred "*with the privity or knowledge of the owner*", conflicts with the provision of Section 18, which makes the limitation of lia-

bility unqualified, except (1) as to liabilities incurred previous to the passage of the Act, and (2) as to the wages of seamen.

It also contends that the legislative history of the Act, including the report of the Conference Committee of the Senate and House, exhibits a deliberate intent to do away with the qualification as to privity or knowledge contained in Section 4283.

This history is contained in the Congressional Record, Volume 15, Parts 4 and 5, of the 48th Congress, First Session, pp. 3954, 3970, 3971, 3973, 3974, 3976, 4349, 5440, 5452, and is briefly as follows:

May 8, 1884: The Senate, in Committee of the Whole, resumed discussion of Bill S. 1448, to remove certain burdens on the American marine, and encourage the American foreign trade. 15th Cong. Rec., Pt. 4, p. 3954. The Section, as it then stood, read as printed above.

Senator Frye moved to amend Sec. 18 by inserting in the first line, after the words "ship owner", the words "without his personal consent or privity". *Ditto*, p. 3970.

Senator Hoar inquired, "How will it read then?"

"The Chief Clerk: 'That the individual liability of a ship owner, *incurred without his personal consent or privity*, shall be limited to the proportion of any or all debts or liabilities that his individual share of the vessel bears to the whole.'"

Senator Miller, of New York, then said, p. 3971:

"That is a remarkable change. As I understand the sentiment of the committee, it was really to make

the ownership in all seagoing vessels a limited liability company, in which every individual was liable for only his share. That was notice to the whole world that nothing but the ship was holden. Now you are going to bring in a clause which would lead to interminable litigation, for some of the owners of a ship will be engaged in the management, they will know in regard to the affairs, and they will be held personally liable for everything, while other owners not immediately connected with the management will escape. The burden will all fall on one or two men if there is any burden.

"It seems to me that in order to encourage the investment of capital in ship-owning we have to do substantially this: We have to make each ship company a limited liability company, and that is notice to everybody. If that is understood to be our law, everybody who trusts a ship does it with full knowledge that there is nothing back of it save the ship itself. Therefore no injustice will be done to any one. But if the amendment of the Senator from Maine prevails there will be two classes of owners in ships—one class, who will have control of the management, will be responsible for everything; and the other class will then take the position of silent partner, and will not be responsible."

After a colloquy between a number of the Senators, in the course of which §4283 was referred to, the Record, p. 3971, states: "The amendment of Senator Frye was agreed to."

Senator Frye then moved to strike out from Section 14 of the House bill, and from Section 14 of the Senate bill, and to include Section 18 as amended so as to include the words, "without his personal consent or priv-

ity", and the Record states, "Amendments concurred in". *Do.*, p. 3973. The bill was then read a third time, and passed. *Do.*, p. 3974.

An order was entered to print the Shipping Bill as amended. *Do.*, p. 3976.

May 20, 1884: The House non-concurred in amendments of the Senate to Bill H. R. 2228 (Shipping Bill), but agreed to a conference with the Senate. 15 Cong. Rec., Pt. 5, p. 4349.

June 21, 1884: Senator Frye presented the report of the Conference Committee, which had been agreed to by the House, which, so far as Section 18 was concerned, was in these words:

"That the House recede from its disagreement to so much of amendment numbered 4 as proposes a new section numbered 18, and agree to said section as proposed by the Senate, *with an amendment striking out the words 'incurred without his personal privity or consent' in the first and second lines, and the Senate agree to the same.*"

This report was concurred in. *Ditto*, p. 5440.

Representative Slocum of the Conference Committee presented to the House the report of the Committee, saying,

"I submit a report from a Committee on conference."

and then read the recommendation with respect to Section 18 as read by Senator Frye in the Senate.

"The statement accompanying the report of the Conference Committee was read as follows * * *

“ ‘Section 18 *limits the liability of a ship owner to the proportion that his individual share bears to the aggregate liabilities.*’ ”

“Mr. Slocum: ‘Mr. Speaker, this Conference report is unanimous, having been signed by all the conferees on the part of the House and the Senate. The statement just read presents very clearly the changes which have been made in the bill as passed by the House. If no gentleman wishes to debate the bill I move the previous question.’ ”

The previous question was ordered, and under the operation thereof the report of the Committee on Conference was adopted. *Ditto*, p. 5452.

Several matters emerge with distinctness from this legislative history.

(a) The original bill provided that

“the individual liability of a ship owner shall be limited to the proportion of any or all debts and liabilities that his individual share of the vessel bears to the whole; and the aggregate liabilities of all the owners of a vessel on account of the same shall not exceed the value of such vessel and the freight pending.”

(b) An amendment was inserted in this provision by the Senate, so as to make the first part of the section read “that the individual liability of a shipowner, *incurred without his personal consent or privity*, shall be limited to the proportion of any or all debts or liabilities that his individual share of the vessel bears to the whole,” etc.

(c) The House non-concurred in this amendment.

(d) A Conference Committee, duly constituted, struck out of Section 18 the words "incurred without his personal consent or privity."

(e) Both the Senate and the House accepted the Conference report, and passed the bill with the words "incurred without his personal consent or privity" stricken out, after it had been called to the attention of both houses by members of the Conference Committee that the amendment had been rejected.

(f) No action was taken by the Conference Committee with regard to Section 30, which repealed "all laws and parts of laws in conflict with the provisions of this Act," and the bill as finally passed by both houses embodied that section.

Two conclusions seem to flow from these circumstances—

(1) That Congress considered and deliberately struck out of the bill a provision which would have qualified the right to a limitation of liability to losses which were "incurred without his [the owner's] personal consent or privity."

(2) That it repealed all laws and parts of laws that were in conflict with section 18 as finally passed.

The intention to repeal by Sec. 30, the qualification, "without his personal consent or privity," in Section 4283, is clearly manifested, first, by the legislative history

of the Act, and secondly, by the terms of the repealing clause.

There can be no fair doubt that Section 18, without the qualification, "incurred without his personal consent or privity," which had been introduced by an amendment, but was stricken out by the Conference Committee, is not the logical equivalent of Section 4283, so that the two can be said to be devoid of conflict so as to stand together.

The two provisions are:

Sec. 4283.

The liability of the owner of any vessel * * * incurred without the privity or consent of such owner or owners, shall in no case exceed the amount or value of the interest of such owner of such vessel and her freight then pending.

*Sec. 18 of Act of
June 26, 1884.*

The individual liability of a ship owner shall be limited to the proportion of any or all debts and liabilities that his individual share of the vessel bears to the whole; and the aggregate liabilities of all the owners of a vessel on account of the same shall not exceed the value of such vessel and the freight pending.

That these two provisions are not the logical equivalent of one another, but are in conflict, is manifest from the fact that by the language of Section 4283 the owner fails to obtain limitation unless the loss was "incurred without his consent or privity," while under Section 18 the aggregate liabilities on account of the vessel can not exceed its value and the freight pending, and there is no

provision in it depriving the owner of that right even if the loss has been incurred with what may be held to be his consent or privity.

That the two provisions are not logically equivalent is also manifest from the fact that if Section 4283 had never been enacted, and Section 18 of the Act of June 26, 1884, constituted the entire statute law on the subject, there would be no foundation in Section 18 for a claim that the owner should be deprived of his limitation if it should be found that the loss occurred with his consent or privity.

The conflict between the two acts appears most clearly in the application of the limitation law to the present case.

Under Section 4283, which has been held to be applicable, the petitioner is denied a right to limitation of liability, while under Section 18 of the Act of 1884, as finally enacted, unqualified by Section 4283, the petitioner obviously would be entitled, on the facts of this case, to its limitation as prayed.

It is submitted, therefore, that the qualification in Section 4283 clearly conflicts with the explicit language of Section 18 of the Act of 1884, in terms, and also, as explained, by the legislative history of the latter section and is, therefore, repealed by Sec. 30 of that Act.

A similar matter was before this Court in *Carey v. Donohue*, 240 U. S. 430, where an amendment had been proposed to the Bankruptcy Act and deleted during the passage of the bill through Congress. The Court took

notice of the legislative history of the Act, and decided that such history showed that Congress, by the final omission of the provision in question, originally included in the bill as it passed the House of Representatives, but struck out in the Senate, deliberately refused to conform one statute to another, and held that the Courts cannot supply by construction that which Congress has clearly shown its intention to omit.

Mr. Justice Hughes, in the course of the opinion, said, at p. 437:

"We cannot but regard the action of Congress as a deliberate refusal to conform the requirements of §60 to those of §3b, and we are not at liberty to supply by construction what Congress has clearly shown its intention to omit. It should also be observed that §60 was again under consideration by Congress in the year 1910, and it was again amended; but the last sentence of §60a, as inserted in 1903, was left unaltered. And the same conditional clause—'if by law recording or registering thereof is required'—was used in the amended subdivision b (*ante*, p. 432, *note*). Whatever argument is made for an extension of the clause, in order more completely to conform it to the language of §3b, we must disregard as addressed to a matter solely of legislative policy."

Congress again considered the subject of limitation of liability in the Act of June 19, 1886, 24 St. Pp. 79, 80, and provided in Sec. 4 of that Act, that:

"The provisions of the seven preceding sections and of Sec. 18 of an act entitled 'An act to remove certain burdens on the American Marine and encourage the American foreign carrying trade, and for

other purposes', approved June 26, 1884, relating to the limitations of liability of the owners of vessels, shall apply to all seagoing vessels, and also to all vessels used on lakes or rivers or in inland navigation, including canal boats, barges and lighters.

It is significant that this extension of the limitation acts was made by reference to the Act of 1884 only, and contained no reference to R. S. Sec. 4283.

The result of the construction of this statute contended for herein would not be to immunize shipowners from all liability. It would only mean that Congress decided in order to encourage shipbuilding and shipowning that a shipowner, after he had built a ship should be in the same position, even if he were only an individual, as he would be if he owned stock in a corporation.

This seems to be the clear meaning of Senator Miller's remarks above quoted from page 3979 of the 15th volume of the Congressional Record.

However, under this construction a shipowner would not be liable beyond the value of the vessel and her pending freight, but the statute would not prevent the shipowner in a proper case, or his manager in a proper case, or the captain in a proper case, from being criminally liable under Revised Statutes §5344 and other statutes if the vessel was wrongfully sent to sea in an improper condition or improperly equipped.

An instance of conviction for a crime of this kind arose out of the loss of the *General Slocum* in the East River, near New York, some years ago. Demurrers to the indictment were overruled, *United States v. Van Schaick*, 134 Fed. 592, and the opinion of the Circuit

Court of Appeals for the Second Circuit affirming the conviction is reported as *Van Schaick vs. United States*, 159 Fed. 847.

Also, of course, it is only the *shipowner* who is protected by this statute. If an officer of the shipowning corporation, or the master or any other person was *personally* guilty of negligence which caused a disaster in respect of which the limitation is claimed, he would be *personally* liable for such negligence irrespective of this statute.

The statute was evidently based on a large view of public policy, namely, that the shipbuilding and shipowning industry in this country should be encouraged, and the burdens upon it removed, as the title of the act indicates; and that the best way to encourage them would be to make shipowners feel that in acquiring and operating ships they were not entering a zone of unlimited liability.

It seems obvious that a man would be much more willing to go into shipowning enterprise when by so doing he was not assuming a liability greater than he would assume if he bought stock in a corporation. It was evidently for this reason and with this consideration of public policy in view that the Act of 1884 was passed.

The Act does not create a class of persons not subject to law and hence immune from liability, but merely creates a class of persons subject only to a limited liability.

III.

The petitioner was entitled to have its liability limited under the terms and conditions of §4283 R. S., if the Court should hold that the qualification of that section is still in force.

1. The ^{Respondent}~~petitioner~~ seeks to identify Mr. Francombe much more closely with the petitioner than the record justifies. There is, however, no doubt about his position, which was explained carefully by himself in the record, is referred to by the Court, and is described in orders obtained by the appellee requiring him to produce documents in Court. There is no word in the record to qualify in any manner his own statement, in his evidence, which was in no way challenged on cross-examination. He said that the company was owned by the Capitol Transportation Company, and that he was interested in the steamer, p. 267, from which it is to be presumed that he had some stock interest in the company. Mr. Noble was the President and Mr. Deitz was the Secretary. P. 267. Mr. Francombe further said:

“Q. Whom did the company employ to manage that ship? A. Employed me.

Q. At a salary? A. Yes, sir.

Q. As Manager what had you to do with chartering the ship? A. Well, I was to look out for the loads and deal with the brokers.” * * P. 267.

He was authorized to employ the master and the engineer, but the master employed the other members of the crew. P. 267. He did not, however, attend to the financial business of the ship.

“Q. Who attended to the collection of her freight? A. Why sometimes on coal freight, the captain would collect it, and on steel—iron ore or pig iron, or rails why they would send a check to the office maybe 30 days afterwards, I think it was 30 days.

Q. What did you have to do with the collection of the money? A. I didn't have anything to do with the collection of the money.

Q. Who paid the bills of the ship? A. The captain paid——

Q. What office did you mean when you referred to the office? A. The Capitol Transportation's office; Mr. Deitz.

Q. Mr. Deitz, the Secretary? A. Yes, sir.” P. 268.

If there had been any question in the mind of the respondent that Francombe occupied any other relation towards the ship or the company, presumably he would have been questioned on the subject on cross-examination; but no question was asked him except to show that he had been going up and down the Lakes about 45 years, p. 286; that he had been a manager of boats for 27 years on the Great Lakes, having had 4 in his charge; that he looked over the plans of the company with Mr. Noble, the President of the Company, when the ships were being built, p. 292; and that he had apparently been manager of her ever since. P. 287. She was especially fitted for service through the Welland Canal but was designed also for other service on the Lakes, as a kind of tramp boat. P. 28. Her certificate covered the Great Lakes generally. Pp. 510-511.

The enrollment of the ship was sworn to by Mr. Benjamin Noble, the President of the Company. He swore that the Company was the sole owner of the vessel. P. 505.

In the extended Protest reciting the loss of the vessel, which was executed, May 21, 1914, before the litigation arose, Mr. Francombe described himself as General Manager of the vessel, p. 502, which accords with his later testimony.

In two orders obtained by the respondents before the question of Mr. Francombe's relation to the steamer became a subject of discussion, they described him as "John A. Francombe, Manager of said steamer, *Benjamin Noble*". Pp. 15-16. The question of his relationship to the firm came up incidentally on examination of George Purvis. The Court asked who Mr. Francombe was, and Mr. Laws, counsel for the respondent said: "He is the Managing owner of the ship".

To which Mr. Masten, one of the counsel for the petitioner replied: "He is not the owner or part owner." P. 251.

The terms Manager, Managing Owner, or Ship's Husband, as pointed out in our principal brief, are used indiscriminately in the maritime law to describe a person who stands in the relation to the ship of ship's husband, or Operating Manager, as distinguished from financial owner of the ship, where she is owned by individuals, or an officer of the corporation, where she is owned by a corporation. *Brief for Petitioner*, pp. 12-19. It is perhaps inappropriate to describe the Manager as Managing Owner, where the boat is actually owned by a corporation

but no misconception arises from it, as Managing Agent is obviously intended.

The District Judge found in his considered opinion that Mr. Francombe was "the managing agent of the *Noble*". P. 438, and "was a man of mature years and ripe in experience." P. 341. At another place in the opinion the District Judge referred to Mr. Francombe as "the Managing Agent of the corporation", but this is an inadvertence or an error. We have already pointed out that he had nothing to do with handling the financial business of the ship. His work had only to do with the employment and upkeep of the vessel. The District Judge properly described him as "the Managing Agent of the ship", p. 438, which was what he himself testified that his relation was. P. 267.

Indeed, Mr. Francombe appears to have been also engaged in some other business, as he was addressed by the Mitchell Company in a telegram, in care of the Capital Brass Company, p. 270, and by the master, at 649 East Congress Street, p. 278, while the office of the Capitol Transportation Company was the corner of Chene and Franklin Streets, p. 268.

The Court of Appeals found that Francombe was "the sole manager of the steamer *Noble*, that appellant had employed him in that capacity." P. 531.

On the undisputed proofs and findings, therefore, Mr. Francombe was not a managing officer of the petitioner, but was an employ   merely; and the petitioner claims that he was an employ   for whose acts or defaults limitation of liability may be accorded.

2. The Court of Appeals for the Sixth Circuit has fallen into the error in this, and in previous cases, of confusing the managing or operating agent of a ship under the maritime law, with the general manager of a corporation under the municipal law. It is quite true that the manager of a ship has power to create *liability* of the ship, under the maritime law, just as a general manager of a corporation can create a *liability* of the corporation under municipal law. But the rules relating to *limitation* of liability for the contracts of the agents in the respective cases are different. The maritime law relieves the shipowning corporation from liability beyond the value of the ship, in respect of acts done by the manager of the ship, while the municipal law does not limit the liability of the corporation for the consequences of the acts of its manager.

In order to attach liability to the corporate shipowner beyond the value of the ship, the participation of the owner in the loss must be personal; that is to say, as was stated in *Craig v. Continental Insurance Co.*, 141 U. S., at p. 638, "Where the owner is a corporation, the privity or knowledge must be that of the managing *officers of the corporation*," by which is meant the duly elected officers of the corporation.

The maritime law has exhibited a tendency to distinguish between the sea fortune of a shipowner, which may be invested in vessel property, and his land fortune which is not so invested.

The law does not require a shipowner to operate the ship himself, nor to be responsible for such operation beyond the value of the ship, provided he has appointed a

competent person to operate the ship in his place. Such competent person may be a shore manager or the captain. In respect of acts done by such representative, for account of the ship, the shipowner is relieved from liability, beyond the value of the ship, and the privity of the managing agent or captain is not the privity of the owner. Thus in *Craig v. Continental Insurance Co., supra*, the whole operation of moving a wrecked vessel had been left by the underwriters, her then owners, to a firm of insurance agents who had employed one Reardon to manage the enterprise of towing the wreck from one point to another. Reardon so negligently managed the matter that the ship was lost. The management of the ship by the agents of the Insurance Company, and Reardon, was just as much the management of the corporation as the management of the ship in this case by Mr. Francombe was the management of the petitioner. The officers of the corporation in both cases were ignorant of what the manager was doing. In both, the Court found that the manager was negligent and that the negligence contributed to the loss; yet in *Craig v. Continental Insurance Co., supra*, the petitioning owner was held entitled to a limitation of his liability, while in this case the right to such limitation was denied.

3. It is well settled that the Limitation Act should be construed liberally in favor of the shipowner and with a spirit of fairness. In *Providence and N. Y. S. S. Co. v. Hills Mfg. Co.*, 109 U. S. at pp. 578, 589, this court said:

“In these provisions of the Statute we have sketched an outline for a scheme of laws and regula-

tions for the benefit of the shipping interests, the value and importance of which to our maritime commerce can hardly be estimated. Nevertheless, the practical value of the law would largely depend on the manner in which it is administered. If the courts having the execution of it administer it in a spirit of fairness with a view of giving to shipowners full benefit of the immunities intended to be secured by it, the encouragement it will afford to commercial operations (as before stated) will be of vast importance. But if it is administered with a tight and grudging hand considering every clause most unfavorably against the shipowner and allowing as little as possible to operate in his favor, the law will hardly be worth the trouble of its enactment."

This quotation was cited with approval in *La Bourgogne*, 210 U. S. 95, at page 120.

In the *Marie Palmer*, 191 Fed. 79, the court said at p. 90:

"It is the opinion of the court that this legislation should be construed liberally so as to protect owners of maritime property from those overwhelming disasters which might result to them if all of their means should be held liable for maritime losses."

See also *In Re Old Dominion Steamship Co.*, 115 Fed. 845; *Boston Marine Ins. Co. v. Metropolitan Redwood Co.*, 197 Fed. 703; *Quinlan v. Pew*, 56 Fed. 111; *The Annie Faxon*, 75 Fed. 312.

"Knowledge" as used in the Statute means "actual knowledge" and not the "means of knowledge." It means guilty knowledge, not only knowledge of the fact from which the danger arises, but knowledge that the fact existing imports danger.

"Privity" imports, at the least, actual knowledge of or personal participation in the cause of the loss. It does not imply or justify the inference that mere negligence of the owner in respect of the cause of the loss is within the meaning of the Statute.

A good definition of the meaning of privity or knowledge is given in the case of *Lord v. Goodall*, etc., 4 Sawyer, 292. SAWYER, C. J., in the opinion, said:

"The next question is, what is meant by a loss 'occasioned or incurred without the privity or knowledge of such owner?' These words, as related to this subject, seem to have been first used in the Statute of Geo. II, in 1734, where there was a restriction provided as to the liability of the owner in certain specified cases happening without the 'knowledge or privity' of such owner. Eng. Adm. St. 167. The restriction was extended to other cases by statute 26 Geo. III., 1786, Eng. Adm. St. 448. The restriction was again extended to other cases by the statute of 53 Geo. III., 1813. And in the statutes of 18 & 19 Viet., the words 'privity or knowledge' were changed to 'actual fault or privity.' *MacLachlan, Shipping*, 704. These statutes seem to form the basis of our own; and an examination of these statutes, with their preambles, will afford no little aid in arriving at a proper construction. The policy of the act is well stated in *Norwich Co. v. Wright*, 13 Wall, 121, and *Moore v. American Transp. Co.*, 24 How. 39. It is quite apparent that it was intended to exonerate owners from liability beyond the value of the ship and freight pending, for losses resulting from many causes for which they were before liable; and, among them, from mere negligence or carelessness of the master or crew of the vessel—from mere general negligence

of employees. So much is already determined by the Supreme Court in *Walker v. Western Transp. Co.*, 3 Wall., 153, wherein the court says: 'We are, therefore, of opinion that in reference to fires occurring on that class of vessels to which the statute applies, the owner is not liable for the misconduct of the officers and mariners of the vessel *in which he does not participate personally.*' Prives, as defined by Bouvier, are 'persons who are partakers, or have an interest in any action or thing, or any relation to another.' One of Webster's definitions of privity is: 'Private knowledge; joint knowledge with another of a private concern; cognizance implying consent or concurrence.' And one definition of privy, as an adjective, is: 'Admitted to the participation of knowledge with another of a secret transaction; secretly cognizant; privately knowing.' As a noun, 'A Partaker,' etc. As used in the statute, the meaning of the words 'privy or knowledge,' evidently, is *a personal participation of the owner in some fault, or act of negligence, causing or contributing to the loss, or some personal knowledge or means of knowledge, of which he is bound to avail himself of a contemplated loss, or of a condition of things likely to produce or contribute to the loss, without adopting appropriate means to prevent it.* There must be some *personal concurrence, or some fault or negligence on the part of the owner himself, or in which he personally participates,* to constitute such privy, within the meaning of the act, as will exclude him from the benefit of its provisions."

La Bourgogne, 210 U. S. 95, and *Boston Marine Ins. Co. v. Metropolitan Redwood Co.*, 197 Fed. 703, are to the same effect.

In *La Bourgogne*, Mr. Chief Justice White said:

“Without seeking presently to define the exact scope of the word ‘privity’ or ‘knowledge,’ it is apparent from what has been said that it has been long since settled by this court that mere negligence pure and simple in and of itself does not necessarily establish the existence on the part of the owner of a vessel of privity or knowledge within the meaning of the Statute.”

See also *Providence Co. v. Hills Mfg. Co.*, 109 U. S. 578, 602; *Quinlan v. Pew*, 56 F. R. 111, 115.

4. The petitioner having delegated the duty of managing the ship to a competent expert employe, at a salary, mere negligence on his part at an intermediate stage of a voyage, would not constitute privity or knowledge of the petitioner, so as to defeat the owner's right to a limitation of liability.

The maritime law nowhere provides that every person who owns a property interest in a ship must be an expert in the building, upkeep, management or navigation of ships. It permits him to discharge the duties which the law imposes on him in these particulars by and through the employment of persons possessing technical skill. It is, of course, essential that the persons appointed to discharge these functions should be competent and possess the technical skill required, and to the extent that they fail to perform their duties through oversight, or even fault, such representatives may involve the owner in liability. Such liability, however, the law permits to be *limited* to the amount of value of the owner's interest in the adventure at the end of any voyage on which liability may arise.

The consensus of opinion in the lower courts accords with the ruling of this court in *Craig v. Continental Ins. Co.*, *supra*, that where an owner appoints a competent agent or master to survey, equip or maintain a vessel or her machinery, the faults or negligence of such agent or master, not participated in personally by the owner (or in the case of a corporate owner by one of the duly elected officers of the corporation) do not constitute privity or knowledge of the owner. *The Annie Faxon*, 75 F. R. 312; *The No. 6*, 241 F. R. 69; *Boston Mar. Ins. Co. v. Metropolitan Redwood Co.*, 197 F. R. 703, 709; *Quinlan v. Pew*, 56 F. R. 111; *Craig v. Continental Ins. Co.*, 141 U. S. 638; *Kidston v. McArthur*, 5 Sess. Cas. 4th Ser. (1878) 936; *Van Eyken v. Erie R. R. Co.*, 117 F. R. 712, 716-17; *The Marie Palmer*, 191 F. R. 79, 292 F. R. 1023; *The Murrell*, 200 F. R. 826, 839; *The Longfellow*, 104 F. R. 360; *In re Old Dominion S. S. Co.*, 115 F. R. 845, 850; *Smitton v. Orient St. Nav. Co.*, 12 Commercial Cases 270, 276; *The Workworth*, 9 P. D. 145, 147; *The Diamond* [1906], Prob. 282.

In the *Annie Faxon* (C. C. A.), 75 Fed. 312, a case in many respects similar to the case at bar, it was held on a proceeding for limitation of liability by the owner of a vessel which had been damaged by the explosion of a boiler, that as the corporation had delegated to a competent and skilled marine engineer the duty of inspecting the boiler and supervising the repairs, it was entitled to limit its liability for the damage, although there had been negligence on the part of some of its employees in inspection or repair of the boiler. At p. 315 Gilbert, C. J., said:

“When we consider the purpose of the law which is under consideration, and the construction that has

been given to it by the courts, it is obvious that the managers of a corporation whose business is the navigation of vessels are not required to have the skill and knowledge which are demanded of the inspector of a boiler. It is sufficient if the corporation employ in good faith a competent person to make such inspection. When it has employed such a person in good faith and has delegated to him that branch of its duty, its liability beyond the value of the vessel and freight ceases so far as concerns injuries from defects of which it has no knowledge, and which are not apparent to the ordinary observer, but which require for their detection the skill of an expert. The petitioners not only deputed the general inspection of the vessel to a competent person, but they had caused the boiler to be inspected by the local inspectors in December, 1892, and they had in their possession at the time of the accident a survey of the local inspectors under which they were justified in using the vessel for a year from that date."

And at page 317 he said:

"It is only necessary for us to inquire, therefore, whether it is sufficiently shown that the negligence was without the knowledge or the privity of the petitioner. In determining this question, regard must be had to the method in which the petitioners conducted their business. * * * It was manifestly impossible that the *officers of these corporations* at their home offices should have had personal knowledge of any of the transactions referred to in the evidence in this case. * * * It is obvious from the nature of the business in which they were engaged that they were required to depute the duty of inspecting and looking after their boilers and hulls to agents selected for that purpose. De Huff was a

foreman in charge of Snake River boats. He was a marine engineer licensed by the United States and a competent and skillful man. His immediate superior was Captain Pegram, port captain of the company whose office was at Portland and who knew nothing about boilers. Both these officers were under R. W. Baxter, superintendent of the division, whose office was also at Portland. The evidence shows that De Huff reported to his immediate superior the facts concerning the condition of the vessel and her boiler, and it is evident from the testimony that the latter had no other knowledge upon the subject than that which he thus acquired, and that Baxter was not consulted or informed upon the subject."

In *Quinlan v. Pew*, 56 F. R. 111, where injury to one of the crew resulted from the unseaworthy condition of a part of the ship's equipment, the Circuit Court of Appeals of the First Circuit, in upholding the owners claim for limitation of liability, said, at p. 115:

"Touching the matter of 'privity or knowledge', we are not shown that the precise question involved here has ever been settled by the supreme court. From the standpoint of the appellant, the cause of his injury was a structural defect, existing when the vessel sailed from her home port on a new voyage. The alleged defect would have been discovered on an extremely careful scrutiny of the vessel and her top hamper, although quite likely to be overlooked on an ordinary examination. It also appears that all the owners lived in the home port. The propositions of law which the appellant bases on these facts, are that under these circumstances the risk was on the owners to completely examine the vessel, and put her in order for sea, and that, failing this, they are

chargeable with privity or knowledge,—not actual, but with that presumed privity or knowledge which for many purposes take the place of the actual. It will at once be seen that, in the eyes of the law, the conditions may be different from what they are in the cases ordinarily before the courts, wherein the injury comes from something supervening after the voyage has begun, or from something arising from an omission to properly repair or fit a ship between her arrival at, and departure from, a port where the owner does not reside. At such times it is not expected the owner will be personally present, and the law permits him to act through his agent, who, when the ship is at sea, is the master, or, when in a distant harbor, is either the master, or some other suitable person designated to perform the duties ordinarily incumbent on himself in a home port. It has been held that under some circumstances the owner may be liable to mariners for faults of the master at sea,—a proposition which we do not now find it necessary to consider; yet, even if he were, such liability would be limited by the statute, as was settled by the supreme court in the opinions which we will hereafter cite. It can hardly be doubted that, alike in the case of a ship at sea and in that of one in a distant port, the statute applies, provided the owner has used reasonable care in selecting his master, consignee, *or other agent*.

And at pages 117, 118:

“We have seen that the supreme court holds that the owners are not chargeable as with privity or knowledge for the acts or defaults of a properly selected master, while the ship is at sea; and that, in the view of the courts of probate division and of appeal, they are not ordinarily so chargeable for the

doings or omissions of an agent in port,—certainly at a port which is not the home of the owners. We are also constrained to the belief that this statute, which the supreme court directs shall be interpreted broadly, has regard for the usual necessities of the occupations of life, and in that respect intends that owners may avail themselves of the proper facilities common to business men, and be relieved, so far as it is concerned, whenever and so far as they have appointed a suitable representative, be he master, consignee, or other agent, to supervise the ship, either at sea or at the home port, or otherwise, and either for fitting her away, or navigating her after she is so fitted away. The law, for the purposes of this case, cannot make a distinction between the owner who has but one vessel, and time and opportunity to give it his personal attention, and the owner who has many vessels, or whose necessities call him long distances from his residence, or whose infirmities, sickness, inexperience, or sex renders him or her incapable of attention to affairs of this nature. Therefore we establish uniformity of application of the law, and fulfill the spirit of the expressions of the supreme court to which we have referred, when we hold that, even if the owner is chargeable under the statute with privity or knowledge, who permits a ship to sail from the home port without making provision for inspection or proper fitting away, *yet he may rest his duty upon any suitable agent, and, when he has done this, he may be relieved under the statute, although the agent may be negligent in some particulars.* Whether, where the owner undertakes personally to do his duty, he is to be charged for the lack of the extremest care possible, or takes the hazard of overlooking some things which the utmost scrutiny might discover, or whether, acting with

ordinary good faith, he will be relieved, provided the defect in question did not come to his attention, we are not now required to determine."

In *Boston Marine Ins. Co. v. Metropolitan Redwood*, 197 F. R. 703, Gilbert, C. J., said at 709:

"Thomas J. Atkinson as the President and Manager, acted for the appellee in purchasing the vessel, and in attending personally to the details connected with the operation thereof * * *. He was a business man and as such for four years he had been the *manager of the appellee's business*. But we cannot concede that an owner of a vessel, in order to be entitled to limit his liability under the statutes must before sending his vessel on her way, acquaint himself with the science of navigation or acquire expert knowledge concerning his vessel, its equipment, its machinery, or the necessary crew therefor or must place between himself and the master an intermediary who shall possess such knowledge, and our attention has been directed to no authority which so holds."

See also the *Alola*, 228 Fed. 1006.

It has also been specifically held that privity or knowledge sufficient to defeat the limitation must be that of the *managing officers of the corporation* when a corporation is the owner of a vessel. *Craig v. Continental Ins. Co.*, 141 U. S. 638-646; *in re Old Dominion S. S. Co.*, 115 Fed. 845; *The Republic*, 61 Fed. 109; *Quinlan v. Pew*, 56 Fed. 111. *In re Old Dominion S. S. Co.*, the court said at 850:

"In the state court * * * a corporation is liable for the negligence of its servants, but under

the act of Congress the privity or knowledge necessary to deprive it of the limitation therein provided for must be that of *its managing officers.*"

This case was affirmed by the Supreme Court. *The Hamilton*, 207 U. S. 398.

In *Van Eyken v. Erie Railroad Co.*, 117 Fed. 712, Judge Thomas had to do with a case where superintendence had been delegated by the corporate owner. He found that *The Republic*, 61 Fed. Rep. 109, did not detract from the authority of the earlier cases of *Quinlan v. Pew* and *The Annie Faxon*, and held as follows, p. 717:

"But the decisions in *Quinlan v. Pew* and the *Annie Faxon*, *supra*, (and *In re Myers Excursion & Nav. Co.* is adverse) are understood to hold that, if the owner select a proper person to perform the duty imposed upon the owner, and such person neglect the same, and the owner be unaware of the neglect or defect that arises or conditions from it, such owner may limit his liability."

The subject came prominently before the Court of Appeals of the Second Circuit in *The Tammy*, 151 Fed. 570, where an accident occurred owing to the failure of a superintendent of a barge to see that it was equipped with proper working equipment. The Court referred to its previous decision in *The Republic*, and cited *Van Eyken v. Erie Railroad Company* with approval, in the following passage of the opinion of Townsend, C. J., at p. 573:

"In the *Republic*, 61 Fed. 109, 9 C. C. A. 386, this court, discussing the construction of the statute limiting liability, suggested that it would be a hard

construction of the statute to deprive the shipowner of protection where a loss had occurred from the unseaworthy or defective condition of the vessel, without knowledge of the owner and without his personal negligence, and held as follows:

"It was the intention of Congress to relieve shipowners from the consequences of all imputable culpability by reason of the acts of their agents or servants, or of third persons, but not to curtail their responsibility for their own willful or negligent acts. *Moore v. Transportation Co.*, 24 How. 1; *Walker v. Transportation Co.*, 3 Wall. 150; *Craig v. Insurance Co.*, 141 U. S. 638; *Quinlan v. Pew*, 56 Fed. 111, 5 C. C. A. 438; *Hill Manuf'g Co. v. Providence & New York Steamship Co.*, 113 Mass. 495, 18 Am. Rep. 527."

"This case, and the decisions therein cited, establish the rule that where the owner has provided a suitable person or persons as his agent to inspect, or provide for the proper equipment of, the vessel, he is not deprived of the benefit of the statute limiting liability by proof of negligence of such agent, where he has had no notice or knowledge of such negligence or resultant defect. *Van Eyken v. Erie Railroad Co.* (D. C.) 117 Fed. 712."

In the case of *W. J. McCahan Sugar Refining Company v. Steamship Julia Luckenbach*, 235 F. R. 388, damage to cargo resulted from a weakness in the shell plating which could have been discovered by a more careful inspection. The duty of inspection had been delegated to a competent manager. Hough, J., in an opinion dated October 12, 1914, quoted at p. 393, said:

"They (the owners) failed to use due diligence in keeping their vessel seaworthy, because the com-

petent men whom they employed to supervise and inspect the steamer so failed—within the stringent rules laid down by the courts. Perhaps it is more accurate to say that their own diligence was unavailing—under the law.

“But it does not follow that because errors, omissions and mistakes were made by their properly selected servants, that they must stand ultimately responsible *in solido*. Primary liability is to be imputed to them, but neither privity nor knowledge is to be so imputed.”

The limitation granted by Judge Hough was reversed in the Circuit Court of Appeals, *The Julia Luckenbach*, 235 F. R. 388, on the ground that the owners entered into an express contract guaranteeing seaworthiness throughout the period of the charter party. No question was made of the general correctness of the foregoing statement of Hough, J., apart from the effect of the express warranty. This Court on the hearing of the case here, adverted to this ruling of Hough, J., with apparent approval. 248 U. S. 139, at p. 149.

The English law is to the same effect.

In *The Workworth*, 9 Prob. Div. 145, limitation of liability was granted in respect of negligence of a shore superintendent, through whose oversight the vessel went to sea in an unseaworthy condition.

A similar ruling was made in *Smitton v. Orient Steam Nav. Co. Ltd.*, 12 Com. Cas. 270, where the Court said that the privity would be limited to that of the persons who have the general management of the affairs of the company, and as Channel, J., said, p. 277, “In this country I suppose that would be the board of directors.”

5. The act charged as a fault by the courts below against Francombe, and attributed through him to the petitioner, of permitting the vessel to continue on her voyage from the intermediate port of Detroit, in her then condition, was, on the finding no more than an act of negligence which would not constitute privity in the sense of the statute.

(a) Mr. Francombe was not responsible for the loading of the vessel in Conneaut. On the contrary, he distinctly informed the captain, before the loading began, that he was to exercise his own untrammelled discretion in determining the proper amount of cargo that he would carry. P. 275.

Subsequently, when the captain telegraphed him that he was being pressed to take 3000 tons, Francombe replied that he thought 3000 tons was too much, and added the suggestion that he take as much as he possibly could. P. 279. The fair intent of this message was that the captain was not to take any more than a good fair load. The fact that he told him that he thought 3000 was too much fairly indicates this.

Francombe had also given the captain the key to the safe, in which the previous logs of the vessel were kept, which served to inform the captain of previous loads that the ship had carried, and her draft at those loads. P. 275.

Respondent's witnesses admit that the captain determined the amount of the load on his own judgment. *Reig*, p. 61; *Roberts*, pp. 66-68; *Goldsmith*, pp. 70-71, 73, 74, 76. The captain telephoned to Mitchell, Cleveland, during the course of the loading, apparently seeking advice, *Goldsmith*, pp. 74, 76; *Mitchell*, pp. 45, 46; and Cap-

tain Mitchell's instruction to the captain was to take what he saw fit. P. 44.

A schedule of loads previously carried on the steamer appears in the record, as Exhibit 35 (by mistake unmarked). Pp. 517 to 522, inclusive. The load that she carried on the voyage in question appears on that record as 2950 tons of manufactured iron. P. 521. This record was kept at Soo Canal, and the column in which the weights appear is labeled "Freight short tons." The printed form was probably used with that heading because a majority of the kinds of loads are carried on a short ton basis.

Loads of manufactured iron, however, appear to be carried on a long ton basis. *Sproull*, pp. 21, 25.

It is admitted that 2950 tons, shown on page 521 in the column headed "Freight, short tons," was in fact long tons and is the amount shown by the bill of lading, p. 463; but the same error presumptively attaches to all the other loads in the exhibit of manufactured iron and rails. The master doubtless, in each case, reported the number of tons shown by his bill of lading. There is no suggestion in the record that the previous masters had ever been asked to convert long tons into short tons for the purposes of this record, nor does it appear how the record was made up. But assuming that the entries on previous cargoes of manufactured iron and steel rails were long tons, as they were in this instance, it appears that the ship had carried: On June 15, 1909, 3225 tons of steel rails; June 10, 1909, 3109 tons of steel rails; August 1, 1909, 3100 tons of steel rails; May 6, 1910, 3024 tons of railroad iron; June 16, 1910, 3192 tons of

manufactured iron, p. 517; October 1, 1910, 3156 tons of pig iron; October 16, 1910, 3033 tons of pig iron, p. 518; August 12, 1911, 3259 tons of steel rails; June 13, 1912, 3251 tons of manufactured iron; June 30, 1912, 3292 tons of manufactured iron; September 28, 1912, 3174 tons of pig iron; October 17, 1912, 3114 tons of pig iron, p. 520.

She had on a number of occasions carried over 3000 tons of iron ore, though it does not appear on the record whether such cargo was carried on a basis of short or long tons. All these cargoes had been carried safely, and, so far as the record shows, without suggestion of peril.

As the master of the vessel was taking command of her for the first time, and the voyage was the opening one of the season, Mr. Francombe's suggestion that 3000 tons was too much was apparently a suggestion of caution, rather than an improper order to overload, as the court below has suggested.

(b) The ship left Conneaut on Saturday, the 15th of April, and was in Detroit on the following day. While crossing Lake Erie a storm of considerable force was encountered. Mr. Morrison, the compass adjuster, who was on board, says that the wind blew hard at midnight; "I should say it was blowing about 35 to 40 miles an hour," p. 220, that the steamer made good weather of it, and, observing the way she was behaving, the captain made the remark to him that "he didn't see why he could not have taken the other car of rails" which had been left behind. P. 220.

The master reported this storm and made similar observations on the subject of the ship's behavior, and expressed his regrets at not having loaded the other car of rails, while discussing the voyage with Mr. Francombe in Detroit. P. 280.

It is evident, therefore, that the master did not consider the ship overloaded, and Mr. Francombe, after examining her in Detroit, observing her trim and freeboard, was strongly of the same opinion. P. 284.

Mr. Mitchell, the chartering agent in Cleveland, who knew the vessel well, and is a man of large experience on the Lake, expressed the unqualified opinion that the steamer was capable of carrying a full 3000 tons of rails. P. 40.

Mr. Francombe had no reason to think, from past experience of the ship, that she was not in thoroughly fit condition for the voyage, as to load and trim, while at Detroit, and concededly he brought, as the District Judge says, a ripe and mature experience to the judgment of that question.

(c) The vessel was inspected in Detroit by two United States inspectors of steam vessels. *Hensel*, p. 222. One of these inspectors had been a ship master of nine years' experience on the Great Lakes, and had been three years in the inspection service. P. 222.

He visited the boat on a number of occasions, spoke of her as a high class vessel, and passed her as seaworthy in all respects.

“Q. Did you notice how she was loaded? A. Yes, sir.

"Q. What do you say to the Court as to the extent of freeboard she had at the time you made the inspection? A. I should think she had about 10 inches.

"Q. Did you regard her in every respect in a fit and seaworthy conditions? A. I did." P. 224.

He would have considered it a part of his duty to report the matter to the inspectors, if he had considered the vessel to be overloaded, p. 225, but as "the load she had in I think was all right for that time of year," he passed her. P. 229. He considered it a part of his duty, for the protection of life on the Lakes, to have taken steps to stop her, if he had any reason to think she was unseaworthy. P. 228.

Another witness, Mr. Craig, a marine engineer, who assisted in the inspection of the boilers for water pressure, p. 237, actually measured the freeboard with a ruler, opposite the No. 5 hatch, at the lowest point of the deck, and found it was 10 inches. P. 239. The measurement was made in connection with the suggestion of the captain that he regretted having left part of the rails behind him in Cleveland, a statement that if he had another load to take up he would load the full 3000 tons, and a discussion as to the comparison of the draft on the Lakes, with the freeboard of this ship and the draft to which Quebec boats were accustomed to load. Pp. 238, 239.

Mr. Francombe estimated the freeboard at from 8 to 10 inches. P. 284.

The ship's draft at that time was 16.8 forward, and she was loaded from 14 to 18 inches by the stern, which would have made her draft aft 18 feet or 18.1. P. 284.

At this time the steamer had 50 tons of water in her hold, which was put in her boilers after she was inspected. P. 290.

The freeboard would have been lightened by the burning of coal which was in the after section of the shop p. 292 before she reached Lake Superior, to the extent of about 6 to 9 inches. Pp. 113; 203; 240, 241; 245; 251; 262.

It is to be borne in mind that there was a very deep sheer to the deck of the boat, and while there was a ten-inch freeboard abreast of No. 5 hatch in the after central part of the ship, the freeboard forward was over 6 feet, and the after part of the ship $2\frac{1}{2}$ to 3 feet. P. 210.

(d) The testimony of ship masters and nautical experts examined in the case, including one called by and sworn "on behalf of the Court," and examined by the Judge alone, p. 408, was to the effect that in their judgment the steamer would have been entirely seaworthy for a voyage through Lake Superior at that season of the year, with a draft at the low point of her deck, of from 6 to 8 inches. *Petitioner's original brief*, p. 39.

The ship's draft of 18.3 at the Soo, upon which the District Judge relied, appears to have been taken somewhat perfunctorily, but if that draft was correctly observed, it proved nothing, in view of the lighter draft that the ship had at earlier stages of the voyage, since it was possible that the master had taken some water into the ballast tanks of the ship to bring her down deeper, while breasting floating ice which was in the Soo River below the lots.

The question on these facts is whether Francombe was properly chargeable with negligence in allowing the ship to proceed from Detroit as she was.

It is to be remembered that the Judge nowhere claims in his opinion that the steamer was loaded otherwise than in accordance with the usual practice that had theretofore prevailed. The basis of his decision was, "I am satisfied that those particular classes of boats are overloaded. They are loaded too deep; particularly this class of small boats with bulwarks."

The Judge therefore laid down a new rule that such boats should have a foot and a half of freeboard. P. 499. That rule, however, could not be known until it was enunciated by some court, or approved by some settled practice. It had never before been heard of on the lakes.

It is too severe a rule to charge knowledge and privity upon an experienced and competent managing agent for permitting a vessel to pass a port of call, when loaded in accordance with time-honored usage, and he is wholly unconscious of any impropriety or danger in the load as it stood, and also to hold the owner, who had no personal knowledge of the actual condition of the ship, to an unlimited liability based on imputed privity under an entirely new rule or standard of loading.

This is peculiarly a case where, as the court said in *La Bourgogne, supra*, "mere negligence pure and simple, in and of itself does not necessarily establish the existence on the part of the owner of a vessel of privity or knowledge within the meaning of the statute."

IV.

A further error of law was committed of the Courts below in applying the doctrine of seaworthiness to the question of overloading.

The voyage of the ship was from Conneaut, Ohio, across the western end of Lake Erie, through the Detroit River, Lake St. Clair and the Soo River, and thence across Lake Superior to Duluth.

The Court founded its decision upon the doctrine that on leaving Conneaut, the steamer was bound to have a foot and a half of freeboard at the lowest point on the deck, though there was no contention or basis of contention in the proof that the freeboard which the steamer had was amply sufficient for the voyage from Conneaut to Lake Superior, and for all ordinary perils reasonably to be anticipated on Lake Superior; and there was proof that with the draft that she had she successfully weathered a moderate gale on Lake Erie, p. 220, and the early stages of the storm, in which she was finally lost, which was encountered about noon of April 27, in which the Court found she survived up to at least 1:30 a. m., on April 28. Pp. 239-242. During this period the wind had reached a force of 40 and 42 miles an hour (whole gale force) from the Northeast, p. 524, and is described by witnesses who had experience of it as a very heavy storm with unusually high seas. *Reid*, pp. 191-194; *England*, 183-185; *Goodenow*, 194-197; *Richardson*, 139, 140, 144, 145; *Benson*, 147-149; *Green*, 152-153; *Palmer*, 160-163; *Rodman*, 168-172; *Ruel*, 173-175; *Pallock*, 397-398; *Weather Record*, 180-181.

It is a well established principle of law that when a part of the voyage of the ship is to be performed in rivers, or other relatively protected waters, and a later stage of the voyage is to be performed upon the high seas, it is not necessary that the vessel shall be made seaworthy at the outset for the whole of the voyage. It is sufficient, if she is seaworthy, for the first part of the voyage in the sheltered waters, provided she is made or becomes seaworthy, for the later stage of the voyage by sea, or in the Great Lake, when she reaches those waters. *Dixon v. Sadler*, 5 M. & W., 405; *Biccard v. Shepherd*, 14 Moore P. C., 471; *Buillon v. Lupton*, 33 L. J. C. P. 37; *Carrer, Carriage by Sea*, 5th Ed., 19 b, pp. 25, 26.

It was the unanimous testimony of the experienced shipmasters examined by both parties that in accordance with the long established practices of navigation, this steamer, which had 6 feet or more of freeboard at the forward end of her deck and $2\frac{1}{2}$ to 3 feet at the after end, p. 210, would be reasonably safe and seaworthy to navigate through all ordinary storms reasonably to be expected on Lake Superior at that season of the year, with a freeboard of 6 to 8 inches at the lowest point of the sheer in her deck, which was about abreast of her No. 5 hatch. *Citations, Original Brief*, p. 39.

The steamer left Conneaut with a freeboard forward of 6 feet or more, $2\frac{1}{2}$ to 3 feet aft and at the low point of her deck, as the petitioner contends, as somewhere about 6 inches. A very definite measurement of the freeboard was made by a witness with his hand while the

steamer was at rest. The District Judge found by the testimony of laborers about the dock who observed the vessel as she was moving out, that the amount of freeboard at the low point was about 2 inches. The observation of the dock laborers upon which the District Judge arrived at this finding was probably illusory, owing to the well known fact that a steamer loaded by the stern, moving in shallow water with her propeller well down, has a tendency to squat to some extent in the water.

At Detroit, the freeboard was observed by two United States Inspectors, who visited the ship, and who were ship masters of long experience on the Lakes. They stated that the freeboard was from 8 to 10 inches. The witness Craig, who measured it with a rule, the ship being then upright, found that the freeboard was 10 inches. P. 239.

The engines of the steamer were in the after end, and her coal bunkers were above or abreast of the smoke stack. It has previously been shown that by the consumption of coal from Conneaut to Lake Superior, the after part of the ship, where the freeboard was lowest, would have a tendency to rise 6 or 8 inches.

In whatever view the evidence be regarded, therefore, it seems manifest that the steamer must have had on emerging from the Soo Canal into Lake Superior, a freeboard of 6 feet or more forward, $2\frac{1}{2}$ to 3 feet aft and from 10 to 14 inches minimum at the lowest point of the sheer of the deck, abreast of No. 5 hatch.

It is from this point that the seaworthiness of the steamer for the dangerous stage of the voyage should have been judged.

By the testimony of every capable witness, all of them being ship masters or other nautical persons of experience on the Lakes, the last one of whom was examined by the Judge himself as a witness for the Court, all agreed that with a freeboard at the low point of the sheer of the deck of from 6 to 8 inches, the steamer was reasonably fit to encounter the perils reasonably to be anticipated for a voyage on Lake Superior at that season of the year.

The Court did not test the question of seaworthiness as applicable to that stage, but harked back to Conneaut and held, contrary to the testimony of every experienced witness in the case that the steamer should have had a foot and a half of freeboard at the low point when leaving Conneaut.

A casual examination of the records will disclose the fact that the Judge approached the case with a preconceived theory that vessels of this class in the Lake are customarily loaded too deep. He stated, p. 433, "I am satisfied that this particular class of boats are overloaded. They are loaded too deep; particularly this class of small boats with bulwarks."

In fact, the finding was not that this boat was not loaded in the usual and customary manner, and with the usual freeboard for ships of her size and class, but that the practices which had theretofore obtained had been wrong practices, and that a new rule should be established, requiring the allowance of a freeboard, at the low point of the deck of 18 inches.

The decision laid down a new standard of seaworthiness. His decision was not based upon practices nor

upon the testimony of navigators, both of which are against it, but upon the testimony of one Logan, a Naval Architect, whose computation was so erroneous as to the displacement and carrying capacity of the ship that he actually found the ship's decks must have been 6 inches under water with the load she admittedly had on board, p. 104, though the evidence indicates that she had a freeboard which the Court finds was at least 2 inches at Conneaut, and was probably at least 6 inches. Logan's error as to the buoyancy of the ship, of course, runs all through his calculations. His statement that she should have had 18 inches of freeboard, in order to give a certain amount of buoyancy, carried with it the vice that he did not know what buoyancy the ship actually had, since he put her deck 6 inches under water, while the finding of the Court was that it was at least 2 inches above water. Logan's testimony was purely theoretical. He had never seen the ship loaded, was not acquainted with her capabilities, and did not take into account the fact that she had been strongly built, much beyond the usual requirements in frames, beams and scantlings, and was a more sturdy vessel in all respects than is commonly found on the Lakes.

Throughout the examination of the petitioner's experts, the Judge repeatedly took the examination out of the hands of counsel, and in cases where the claimant's counsel declined to cross examine, himself cross examined, not upon the question of what draft would have been reasonably safe for the ordinary perils of a voyage, as to which the witnesses had testified from their experience, but as to what they thought in certain special

circumstances would be the best and safest draft to fit the steamer to encounter extraordinary perils. These cross examinations clearly indicate a preconceived bias on the part of the Judge against the practice of loading steamers on the Lakes, though no disasters were shown to have resulted from them, and an effort which, in every case, was unavailing to wrest from the witnesses admissions which might tend to support his theories.

The Circuit Court of Appeals made no specific finding as to the draft of the ship, or what it ought to have been, but contented itself with the general conclusion reached by the District Judge that the ship had been overloaded, and addressed itself to certain specific legal points in relation to the claim for limitation of liability.

Notwithstanding the conclusions of the Court below, the outstanding facts are that the vessel was loaded, in the judgment of the master, with sufficient freeboard to encounter all perils ordinarily to be expected; that his judgment of the amount of freeboard required was confirmed by Francombe, by the U. S. Inspectors, and by eight ship masters of experience as being reasonable and proper and affording presumptive safety against such perils; that the vessel successfully weathered a storm on Lake Erie, and another storm on Lake Superior of considerable severity, surviving until after 2:30 a. m. of April 28, when she was overwhelmed by a storm of extraordinary severity and disappeared from some unknown cause.

In the circumstances, it is submitted that the legal presumption should have been that the vessel was lost by "dangers of navigation" within the meaning of the exception contained in the bill of lading, p. 463, rather than

from overloading, and that the decision of the Courts below was erroneous in matters of law, as well as at variance with the disinterested testimony of all the experienced navigators whose opinions and judgments were laid before the Court.

V.

The decree below should be reversed.

Respectfully submitted,

J. PARKER KIRLIN,
Counsel for Petitioner.

March, 1919.



FEB 20 1919

JAMES D. MANER,
CLERK.

No. 231.

October Term, 1918.

IN THE
Supreme Court of the United States.

In Admiralty.

CAPITOL TRANSPORTATION COMPANY,
Petitioner,

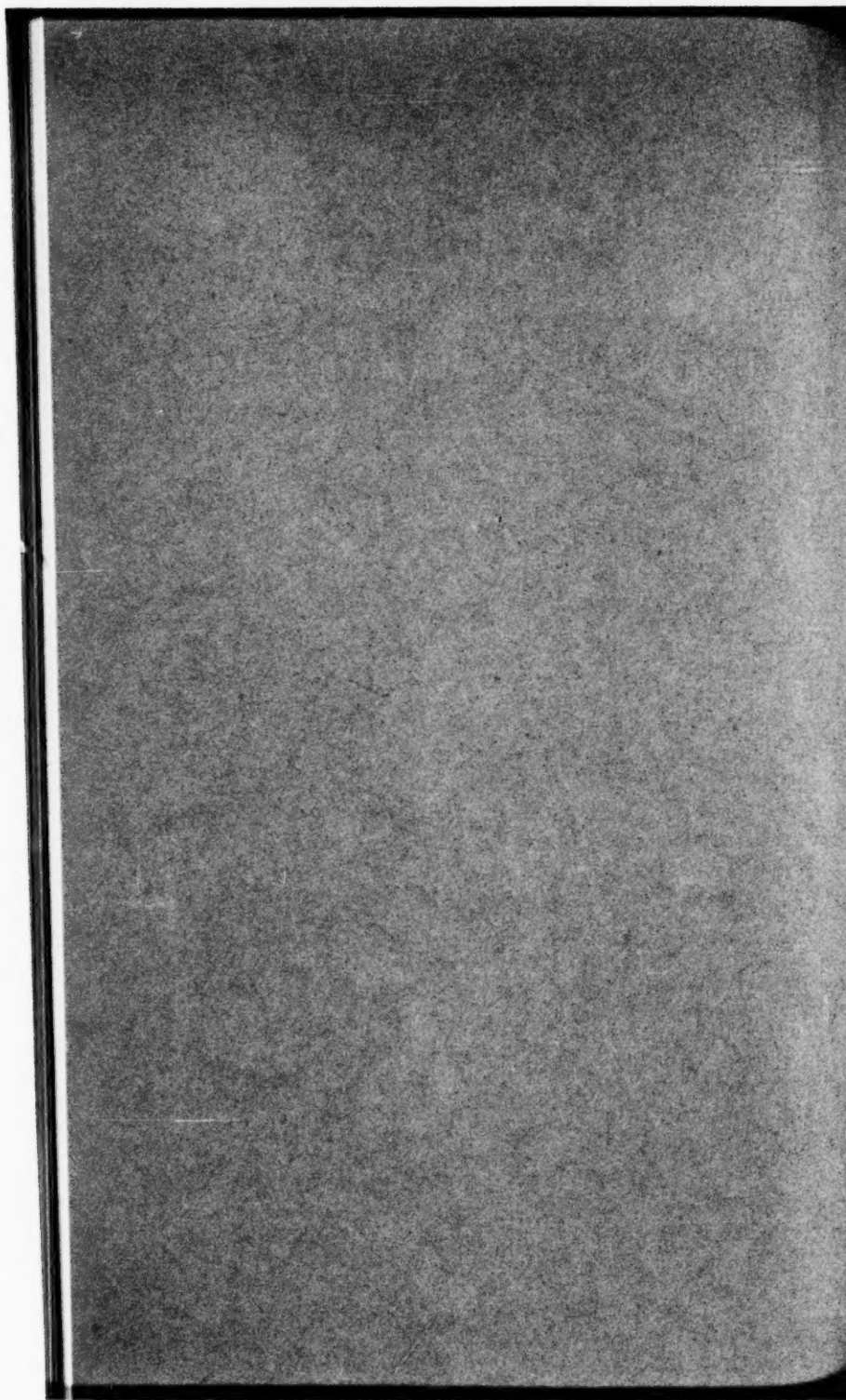
v

CAMBRIA STEEL COMPANY.

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IN THE
Supreme Court of the United States.

October Term, 1918. No. 231.

IN ADMIRALTY.

CAPITOL TRANSPORTATION COMPANY,
Petitioner,

v.

CAMBRIA STEEL COMPANY.

BRIEF FOR THE RESPONDENT.

COUNTER-STATEMENT OF THE CASE.

With the petitioner's statement of the case contained on pages 1 and 2 to the middle of page 3 we have no complaint. From this point on, however, many statements are so contrary to the evidence and the findings of the court below that we deem it necessary to correct them.

On page 3 of the petitioner's brief it is said:

"She (referring to the steamer 'NOBLE') also had other agents or brokers at Buffalo, Cleveland and Duluth to get cargoes, those at Cleveland being Mitchell & Co."

This statement would lead the court to think that the "agents and brokers" referred to were equal in authority with John A. Francombe, the manager of the ship. Such is not true. They were mere local agents or brokers who looked after the business for Francombe, but had absolutely no authority and did not in fact contract for the ship. The instance case shows it.

Mitchell, the broker in the present case, testified that he did not conclude the charter without first consulting with Francombe. "I said to Mr. Francombe on the long-distance telephone I could get him a load of steel rails from Conneaut to the head of Lake Superior at eighty cents." "He said to take it." "I notified Mr. McMorris, of M. A. Hanna Company, we would accept the cargo." (Record, p. 43.)

Again, on page 4, there is an excerpt from the testimony of Francombe bearing upon the subject of the contract. Following this is the statement, "This shows the entire arrangement between the parties."

We deny this statement. It is only a small excerpt from the testimony of Francombe, most favorable to the petitioner; and is a conversation said to have taken place after the contract had been concluded (Record, pp. 271-272).

So far as it bears upon the question of the number of tons to be carried and whether Francombe or the master decided the quantity, the lower court found against the statements in the excerpt.

Again, on page 5, this statement is made:

"The 'NOBLE' reached Conneaut about April 18th and was there loaded by employees of the Cambria Steel Company with the cargo in question; they agreed that it was the judgment of the master which determine the amount they put on board."

Again, at the bottom of page 5, this statement appears:

"Francombe was not at Conneaut at all and took no part in the loading. On April 17th in Detroit he received a telegram from the master: 'Will be loaded Saturday noon; Mitchell wants 3000 tons to go if possible. Please advise'; to which he replied, 'Think 3000 tons too much. Best take all you can.' There is no testimony, how-

ever, to show that this reply reached the master before he sailed on April 18th or was ever delivered."

We dispute both of these statements. Anyone reading them would certainly get the impression that the whole matter of loading was left to the master free from any directions from Francombe. The fact is and the Court found, that the master was in daily communication by telephone or telegraph with Francombe as to the quantity of cargo to be taken, and it was only after the final instructions from Francombe that the master would accept the last carload.

As to the statement "there is no testimony, however, to show that this reply (referring to the telegram) reached the master before he sailed on April 18th or was ever delivered" we say that such a doubt is raised here for the first time. The original telegram and the copy were both produced by Francombe at the trial, and the present suggestion that the telegram to the master was not delivered is a pure afterthought.

Again, at the top of page 6 of the brief, it is stated that while the "NOBLE" was at Detroit

"she was inspected by Government inspectors" and

"they passed her as seaworthy for the trip and she continued her voyage."

This would infer that the inspection was for general seaworthiness as regards draft, load, etc. The fact is but one witness inspected her, and he only to determine the structural seaworthiness of her hull. He stated frankly to the court that he had never inspected a boat before with cargo in her, and had had no experience in matters of this kind. He said he did not think he could tell when a boat was overloaded and

did not think he was able to judge of that and had never undertaken to judge of it; he was not there for that purpose, and gave no attention to those matters. (Opinion of District Court, Record, p. 444.)

ARGUMENT.

If the petition for a certiorari in this case were granted for now we apprehend that it would be refused, because it was evidently allowed by this court in view of the fact that two other cases involving one of the questions raised here had been certified to this court by the United States Circuit Court of Appeals for the Southern District of New York, namely, the case of Pendleton Brothers v. The Benner Line, since decided and reported in 246 United States Supreme Court 353, and the case of Luckenbach v. McCahan Sugar Refining Company, since decided and reported in U. S. Adv. Ops. 1918-1919, page 70.

The point involved was whether an owner of a vessel is entitled to a limitation of liability for loss of cargo due to unseaworthiness where the contract was a personal one. In both of the cases, since the present certiorari was allowed, this court has denied the right of limitation.

THE PETITIONER'S POINTS.

The petitioner presents three points for the consideration of this court. We will consider them separately.

PETITIONER'S FIRST POINT.

"Is an agreement for carriage of a designated cargo or a charter of a particular ship to carry

a particular cargo when made by brokers authorized by an employee of the corporation, who exercises the powers of manager of the ship, a personal contract of the corporation so as to deprive it of its right of limitation under the statute?"

The answer to this point is, that no such question is presented by this record, and no such point was decided in the court below. There was no "charter" of a "particular ship" to carry a "particular cargo." The contract was simply one by a Transportation Company to carry a given quantity of cargo between named ports at a specified rate. The ship to perform the service was never mentioned until after the contract had been concluded. The shipper did not know that the "Nona" was selected until afterwards, and never knew her carrying capacity.

Again, the agreement was not made "by brokers authorized by an employee of the corporation to exercise the powers of manager of the ship." On the contrary, the contract was made by one Francombe, the general manager of the company, who was the sole manager of the "Nona," and a director of the corporation. The only part the broker, Mitchell & Co., of Cleveland, had in the transaction was to transmit, by telephone, to Francombe at Detroit the offer of the business. Francombe accepted the offer, fixed the rate, and directed Mitchell to communicate the acceptance to the appellee's broker. (Mitchell, Record, p. 43—also opinion District Court, Record, p. 438.)

Correctly stated the question presented and decided was:

"Is an agreement for carriage of a named cargo, made between a shipper on the one hand and the general manager of a transportation company on the other hand, in which no particular ship is designated for the service, a personal contract so as to deprive the corporation of its right

of limitation of liability under the statute, where the vessel subsequently furnished was, with full knowledge of the owner, unseaworthy at the commencement of the voyage?"

Both courts found as facts that Francombe was the general manager of the petitioner and the sole manager of the steamer "NOBLE." That he made the contract, and had personal knowledge that the "NOBLE" was overloaded to the point of unseaworthiness. They held, as a matter of law, that the contract was a personal one, and the overloading was with the privity and knowledge of the general manager of the corporation. Upon these two grounds the Court denied the right of limitation. In its opinion the Circuit Court of Appeals said (Record, p. 531):

"It is clearly to be inferred from the evidence that Francombe was the sole manager of the steamer 'NOBLE'; that appellant had employed him in that capacity; that he was invested with and he exercised the power of the corporation in selecting and employing the chief officers, such as the master and engineer, of the vessel and in determining what contractual services the vessel should engage in; that he was held out by the company and was recognized by persons, such as brokers, dealing in respect of the ship and her services, as the person ultimately entitled in such matters to represent and bind the corporation. The initial arrangement for the carriage of the steel rails in question was held in abeyance until it received his ultimate approval; and even the master would not complete the loading of the rails until he first obtained the sanction and direction of Francombe. In short, it is not shown that final authority in the respects mentioned resided in any person except Francombe; and he may rightfully be treated as in fact the company's manager. Since the board of directors of the corporation must be presumed to have exercised a supervision

over its business, the board is to be charged with knowledge of the extent of the power usually exercised by its ship manager and held to have acquiesced in his possession of such authority, even though it had not been given in express terms when he was employed as manager of the vessel. *Sun Printing and Publishing Ass'n v. Moore*, 183 U. S. 642-650-1; *Walker v. Detroit Transit Ry. Co.*, 47 Mich. 338, 350. The language of Judge Severens in the *Great Lakes Towing* case, *supra*, at page 21, would therefore seem to be peculiarly apposite:

"The Mills Transportation Company, being a corporation, could act only through some agency. McMorran was the manager, and was vested with authority to make such contracts as this in behalf of the owner of the vessel, and the contract was the personal contract of the corporation, not in consequence of any principle peculiar to the maritime law, but by virtue of the common law rules of agency."

"Francombe sanctioned and in effect made the verbal contract of affreightment out of which the present controversy grew; and the contractual obligation so created was the personal contract of appellant. In our view of the evidence, Francombe's knowledge that the steamer was overloaded is too clear for argument. It inevitably follows that this overloading took place with the privity and knowledge of appellant."

See also the "*BENJAMIN NOBLE*," District Court Opinion, Record, pages 438-443; 232 Federal, 382.

The findings were fully justified by the evidence.

Another statement of the petitioner, at the bottom of page 9 of its brief, as bearing upon the authority of Francombe, is open to criticism. The statement is:

"The only evidence in the record about his employment is his own,"

This is followed by a quotation from the testimony.

We deny this. It is part of the evidence, but not all; the remaining portion we will call attention to presently. The evidence quoted, however, is sufficient of itself to establish the authority of Francombe as the general manager of the corporation. He says he managed the ship, looked after the loads, dealt with the brokers, hired the captain and engineer, and decided what cargo should be taken.

The additional facts proven and found by the lower court were, that after the ship was sunk Francombe filed a protest in which he swore that he was "the general manager of the "BENJAMIN NOBLE" (Rec., pp. 502-504); that he had authority to pay the captain a bonus for services (Rec., p. 276); that he communicated with the master daily regarding the quantity of cargo to be loaded, and finally that he had under his charge all of the books, records and bills of lading of the company. In response to a subpoena to produce these documents (Rec., pp. 293-294), counsel for the petitioner said:

"As I mentioned in the examination this morning, Mr. Francombe was subpoenaed to bring in the records of the company, among other things to show all the cargoes she had ever carried. Mr. Francombe has charge of these records and we have brought them here and tender them to the other side; the bills of lading and records showing these cargoes. For the purpose of convenience we have reduced them to compilations which are for their services for the purpose of checking up."

This evidence shows beyond doubt that the entire management of the company and of the steamer "NOBLE," its only vessel property, was vested in Francombe. No person connected with the company took any part in its management or shared his duties with him. He was in every sense the company, and

whatever he did or knew concerning the company bounded it. It was impossible to have vested in him more complete authority than that which he had. In the light of these facts it seems to us perfectly futile to contend that Francombe was a mere "ship's husband" or "ship's manager" of such limited authority that his acts could not bind the corporation.

AS TO THE LAW UPON THE SUBJECT.

In considering the questions of law in this case, it must be remembered that the want of privity and knowledge is a matter of defence, and in a petition for limitation of liability the burden of proving them rests absolutely upon the petitioner. Speaking of this burden of proof Benedict's Admiralty, 4th Edition, says (page 381):

"The regular form of a hearing is for the petitioner to open the proceedings by reading his libel and then offering some proof to inform the court of the nature of the disaster and proving in full his lack of privity and knowledge therein."

See also the case of the "John H. Starin," 191 Fed. 800, 801-802, in which it is stated:

"It is equally clear that the burden lay upon the petitioner to prove that he was without privity or knowledge of the facts, if any, which made him liable and he was bound to allege this in his pleading."

In re Davidson Steamship Co. (D. C.), 133 Fed. 411;

Benedict's Admiralty (4th Ed.), Article 526.

And further, on the same page (802) it is said:

"Thus he is compelled to go into the whole case because the burden of explaining the loss or

damage is now upon him, and the burden of proving lack of knowledge or privity always was upon him."

The petitioner has not only failed to meet the burden resting upon it in this regard, but the evidence shows affirmatively not only positive knowledge that the steamer was overloaded to the point of unseaworthiness, but that the loading was done with the privity and by the direction of Mr. Francombe.

The petitioner's brief beginning at page 12 cites many authorities tending to define the limitation of a "ship's husband's" powers. They are not in point here because Francombe was not a mere ship's husband in the ordinary maritime sense of the term, but was the general and sole manager of the corporation and of its only vessel property, the "NOBLE." He was also a director in the company.

To discuss each case cited would require a brief of great length, but in view of the clear distinction between the authority of Francombe and that of the ordinary ship's husband we do not think such a discussion is necessary.

The petitioner further contends that a personal contract of a corporation must be made by an executive officer, but this is not the law. That the acts and knowledge of a general manager of a corporation will bind it is no longer open to question.

The Sun Printing & Publishing Co. v. Moore, 183 U. S. 642, 650, 651.

In *Great Lakes Towing Co. v. Transportation Co.*, 155 Federal 11 (6th C. C. A.), the Court said:

"The Mills Transportation Company being a corporation, could act only through some agency. McMorran was the manager and was vested with authority to make such contracts as those in be-

half of the owner of the vessel and the contract was a personal contract that the corporation not in consequence of any principle peculiar to the maritime law but by virtue of the common law rules of agency."

Approved in *Pendleton v. Benner Line*, 246 U. S. 353-357."

In the case of *Jeremiah Smith & Sons*, 193 Federal 395, while a gasoline boat's tanks were being filled with gasoline an explosion occurred and injured the crew. The tanks were being filled by one Homan, who managed the business of the company owning the boat at Fall River, employed and paid the crew, told the captains when and where to go, ordered and paid for the supplies and attended to the repairs.

It was held that the company could not limit its liability, the Court saying (p. 397):

"In the case of corporations, knowledge or privity of managing officers or agents is knowledge and privity of the corporation. . . . His knowledge and privity was that of the petitioner."

In *Parsons v. Empire Transportation Co.*, 111 Federal 202, a transportation company conducted a line of steamers between two ports in Alaska. Its general manager was located in San Francisco, and he sent a superintendent to take charge of the company's business in Alaska. The superintendent returned and left the business in charge of an assistant. The assistant permitted a barge to be loaded for a voyage for which it was unfit and it sank in a storm.

HELD that the company was responsible for the acts of the agent, and not entitled to the limitation of liability.

In the case of *Craig v. Continental Insurance Co.*, 141 U. S. 638, so often quoted by the petitioner, the question at issue was not raised at all. It illustrates

how misleading it may be to quote extract without stating the facts. Here a vessel stranded and was abandoned to the underwriters, whose agent at Buffalo employed a marine inspector to take charge of the salvage operation. The vessel was floated and proceeded to a port of refuge, but while on the way sank through unseaworthiness. An effort was made to hold the Insurance Company liable without limitation upon the ground that it was charged with privity and knowledge through the employee. This contention was rejected by the Court, who said (Rec., p. 647):

"The only negligence alleged in this case is that of Reardon, in attempting to tow the 'EXPERIENCE' in the condition in which she was to Detroit. But he was not an officer of the corporation or employed directly by it, but was employed by Dimmick or Crosby & Dimmick, the agents at Buffalo. He was not at most a mere employee of the corporation. He was not its general agent, nor so far as appears had it any knowledge of his appointment. If he was an agent at all his powers were no greater than those of a master of a vessel for whose negligence the owner is not liable, even though the privity or knowledge of the master exists. The knowledge of Reardon was not the private knowledge of the corporation."

So far as this case is an authority at all on the point now discussed, it clearly infers that if Reardon was the company's general agent, his knowledge would have bound the company.

At this point we want to enter a protest against the insertion in the brief of the supposed copy of the statute of Michigan bearing upon the authority of a corporate agent to bind the corporation, stated in full on page 41 in the appendix to the brief. No such statute was offered in evidence or referred to during the trial or the previous arguments in this case. It may be the statute in force or it may not be. What construction

the Michigan court have put upon the statute we do not know.

Regardless of the statute, however, we may say the law is well established that a corporation will be bound not only by the actual authority vested in an agent or manager, but by acts which he does with the knowledge, consent and approval of the corporation. Francombe was not only acting within his delegated powers, but was held out as the general manager and everything which he did was uniformly adopted by the corporation.

AS TO THE PETITIONER'S SECOND POINT.

“Where a vessel is overloaded by her master, so as to be unseaworthy and the fact of the overloading is known to an employee of the owner who exercised the powers of manager of the vessel, is such privity or knowledge that of the corporate owner so as to deprive it of the right of limitation of liability?”

The vice in this point is the statement of fact that the vessel was overloaded “by her master” and the fact of overloading was known to “an employee” of the owner who exercised the powers of manager of the ship.” As heretofore shown, the Court found upon ample evidence that Francombe was not merely “an employee” of the corporation, but was its general manager, having sole control of its business, and vessel property, the steamer “NOBLE.”

Again, the vessel was not overloaded by “the master” if by that is meant under his uncontrolled direction and authority. The Court found that the quantity of cargo taken on board was under instructions from Francombe. For finding of the District Court see Record, pages 437-452.

Upon this point the Circuit Court of Appeals said (Rec., p. 531):

"The initial arrangement for the carriage of the steel rails in question was held in abeyance until it received his (referring to Francombe) ultimate approval, and even the master would not complete the loading of the rails until he first obtained the sanction and direction of Francombe."

"In view of the evidence, Francombe's knowledge that the steamer was overloaded is too clear for argument. It inevitably follows that this overloading took place with the privity and knowledge of the appellant" (Rec., p. 532).

Not only did Francombe in all material respects determine the amount of the cargo, but when the "NOBLE" reached Detroit, which was the first stage of the voyage, he went on board several times and saw her condition. Referring to this fact, the District Court said (Rec., p. 452):

"When he (the captain) got along up to Detroit, the managing agent (meaning Francombe) went aboard of her, saw and talked with him about it, and the managing agent, with his experienced judgment, must have known that she was overloaded, and yet he permitted her to go on her journey, thinking, no doubt, she would get through, and of course hoping she would get through."

"It was a mistake and wrongdoing of the owners of the vessel, and they are not entitled to limit their liability. They are responsible for the damage which resulted."

In view of these concurrent findings we would not feel it necessary to present the supporting evidence to this court, were it not for the fact that the petitioner's brief makes glaring statements, which ought to be answered and corrected.

Francombe was familiar with the "NOBLE's"

plans; had managed her from the time she was built (Rec., pp. 287-292). With full knowledge that her normal capacity was about 1800 tons and her maximum capacity 2600 tons, he sent her to carry 3000 long tons (3305 net tons).

As the loading neared completion the stevedores asked the master how much he would take, but the latter refused to say until he had gotten instructions from Francombe. On the day before the cargo was completed he talked to Francombe twice on the telephone and sent him a telegram asking instructions, to which he got a reply. The telegrams were produced by the petitioners, so there is no doubt about their authenticity (Rec., p. 278). They show that even Mitchell, Francombe's broker at Cleveland, was giving some instructions as to the quantity to be taken, and when these became too urgent, the master appealed directly to Francombe for final advice, which was, "Think 3000 tons too much. Best take all you possibly can" (Rec., pp. 278-9).

To the first two telephone messages Francombe's reply was, "She has had on 3100 tons, but load to your own judgment." On the very day that the loading was completed, the master again telephoned Francombe for final instructions as to whether or not he should take on an additional car of fifty tons. After this conversation he said to the stevedore that "he would take on one more car." As each car contained about fifty tons, the vessel at that time must have had on board about 2950 gross tons, an overload beyond her maximum capacity of 350 tons.

To say that this master loaded this vessel solely upon his own judgment, without instructions or influence of Francombe, and that Francombe had no knowledge whatever of the load, is sheer nonsense, and a finding to that effect would have been directly contrary to the evidence.

As to the testimony bearing upon the telephone conversations, see

ROBERT (Rec., p. 62); GOLDSMITH (Rec., p. 70).

Not only was Francombe then fully advised of the load with which the "NOBLE" started, but when she reached Detroit he went on board a half-dozen times (Rec., p. 290). He must have seen what the other witnesses saw and what the photograph (Rec., p. 504) taken by Klumpp showed (Rec., p. 78), namely, that the ship was decks to and the water was lapping up four or five feet inboard of each side of the decks. We respectfully submit that the concurrent findings of the District Court and the Circuit Court of Appeals on the point now under consideration ought not to be disturbed.

AS TO THE THIRD POINT:

"In view of the fact that in section 18 of the Act of June 26, 1884, the words 'incurred without his personal privity or consent' were intentionally and purposely omitted by Congress, and the right of limitation was expressly given to cover 'all debts and liabilities,' and that section 30 of the same act expressly repeals 'all laws and parts of laws in conflict' therewith, was not the language of section 3 of the Act of 1851 repealed so that the limitation of liability now in force under the Statute of June 26, 1884, covers all debts and liabilities except for wages, irrespective of any privity or knowledge concerned in the duty or liability."

Under this point the petitioner, notwithstanding the repeated decisions of this and other Federal courts to the contrary, argues that the Act of 1884 supersedes and repeals the Act of 1851, and that the latter act eliminates the legal consequence of the privity and knowledge of initial unseaworthiness in the case of personal contracts. This view has been so positively repudiated

by this court as to make it almost a matter of superogation to again discuss the question.

In the case of *Richardson v. Harmon*, 222 U. S. 96-103, where precisely the same contention was made as here, this Court said:

"No purpose to repeal or qualify any of the terms of the existing liability law is declared, nor is this section declared, in words, to be an amendment of that law. . . .

"The legislation is in *pari materia* with the Act of March 3, 1851, 9 Stat. 635, c. 43, as carried into the Revised Statutes as Section 4823 *et seq.*, and must be read in connection with that law, and so read, should be given such an effect not incongruous with that law so far as consistent with the terms of the later legislation. The former law embraces liabilities of maritime torts, but excluded both debts and liabilities for non-maritime torts. The section under consideration includes debts, save wages of seamen and liabilities of an owner incurred prior to the passage of the law."

"Neither is it necessary to conclude that the section in question is a repealing act as to any of the qualifications of the preceding limitations found in section 4823, *et seq.*, of the Revised Statutes. To so hold would be to attribute to Congress a wider purpose than we have any reason to suppose—that of extending the benefits of sections 4823, *et seq.*, regardless of the owner's knowledge or privity."

Similar rulings have been made by the Federal courts.

Great Lakes Towing Co. v. Transportation Co., 155 Fed. Rep. 11.

No authority has been cited by the petitioner contrary to these pronouncements.

The same question was again raised in *Pendleton v. Benner Line*, 246 U. S. 353, where the Court said:

"Where the statute does not limit liability for the personal acts of the owner done with knowl-

edge, is established by *Richardson v. Harmon*, 222 U. S. 96. It was said in that case (p. 106) that section 18 leaves the owner 'liable for his own fault, neglect and contracts.' The principle was held to apply to contracts less personal than this in *Great Lakes Towing Co. v. Mills Transportation Co.*, 155 Federal Rep. 11, and in the '*Loyal*,' 204 Fed. Rep. 930, where it was not disposed to disturb the very strong and deliberate intimations of *Richardson v. Harmon* in the application to the present case. It is said that the owners did their best to make the vessel seaworthy, and if it was not so, the failure was wholly without the privity or knowledge of the petitioner, but that is not the material question in a case of a warranty. Unless the petitioner can be discharged from his contract he must answer for the breach, whether he was to blame for it or not."

Again in the very latest pronouncement by this Court in the case of *Edgar F. Luckenbach, Petitioners, v. W. J. McAlahan Sugar Refining Company*, decided December 9, 1918, and reported in U. S. Advance Reports, January 15, 1919, page 70, the same question was raised, and this Court said:

"The owners contend that, under section 4823 of the Revised Statutes and section 18 of the Act of June 26, 1884, chap. 121, 23 Stat. at L. 53, 57, Comp. Stat. 1916, sections 7707, 8028, their liability should have been limited to the value of the ship and her pending freight; because the District Court found that her unseaworthiness was without their privity or knowledge; and this finding was not disturbed by the Circuit Court of Appeals. But the liability of the owners sought to be enforced here is one resting upon their personal contract; and to such liabilities the limitations acts do not apply. *Pendleton v. Benner Line*, 246 U. S. 353, 62 L. Ed. 770, 38 Sup. Ct. Rep. 330."

GENERAL REVIEW OF PETITIONER'S CASE.

In viewing these various contentions of the petitioner as a whole, we say without fear of successful contradiction that neither points 1 nor 2 are raised by this record, because the controlling facts therein stated are not supported by the evidence, and are directly contrary to the findings of both the District Court and the Circuit Court of Appeals. As all of the witnesses were produced before the Court, and the findings were fully justified by the evidence, we take it that this Court will accept them as conclusive, in the absence of manifest error.

Edgar F. Luckenbach v. W. J. McAlam
Sugar Ref. Co., U. S. Advance Rep.,
January 15, 1919, p. 70.

As to point 3, we can only repeat what we have already said, this Court has decided against the petitioner's contention.

THE CONTENTION OF THE APPELLEE.

Not only was the limitation of liability in this case properly denied upon the ground that the contract was a personal one, but upon the further ground that the unseaworthiness of the "Noma" resulted from the petitioner's own wrongdoing in directing and approving the overloading of the ship, in consequence of which she foundered.

This, of itself, is a sufficient ground to sustain the present decision irrespective of any question of the effect of a personal contract. Indeed, the petitioner scrupulously avoids discussing this phase of the case for the evident reason that it is unanswerable. There is no conflict of law upon this point, and never has been.

Richardson v. Harmon, 222 U. S. 96;

Great Lakes Towing Co. v. Mills Transportation Co., 155 Fed. Rep. 11;

Pendleton v. Benner Line, 246 U. S. 353;

Luckenbach v. McCahan Sugar Refining Co.,
U. S. S. C. Advance Rep., January 15,
1919, p. 70.

To emphasize the extraordinary and controlling features of the overloading we call the Court's attention to the following facts and findings of the lower court:

The original plans of the "NOMEX" were submitted by the owner to Francombe as an experienced mariner, and he was her managing owner from the time she was built in 1909 until the time she was lost in 1914 (Rec., p. 292).

With full knowledge that the "NOMEX" was designed and built to carry approximately 1800 tons, with a maximum capacity of 2000 tons, Francombe actually had her loaded with 3305 net tons, in addition to fuel and stores, an overload of about 1500 tons.

She was designed to have a free-board of approximately 33½ feet, whereas at the time she was lost her decks were practically awash (District Court Opinion, Rec., p. 485).

At the time of her loss she carried the biggest load in her history, and the biggest by 300 tons of any ever carried in the month of April.

In the vicinity where the "NOMEX" foundered there were eight other vessels, some light and some loaded, some large and some small, some proceeding with the wind and some against it. None of them were lost or in danger of being lost.

As either the findings of the court below or the evidence bearing upon the various points raised by the petitioner has already been quoted or referred to here-

tofore, we do not deem it necessary to repeat them. As an alternative we respectfully refer this Court to the opinion of the learned Judge of the District Court beginning on page 437 of the record and to the opinion of the Circuit Court of Appeals beginning at page 528 of the record, both of which show a most painstaking consideration of the evidence and of the law bearing upon the various questions involved in this case.

We respectfully submit that the conclusions of the lower court are correct and free from error and that this judgment ought to be affirmed.

Respectfully submitted,

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Proctors for the Respondent.

CAPITOL TRANSPORTATION COMPANY *v.*
CAMBRIA STEEL COMPANY.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE
SIXTH CIRCUIT.

No. 231. Argued March 14, 17, 1919.—Decided March 31, 1919.

An owner who by personal contract has warranted the seaworthiness of a vessel, and is also privy to and has knowledge of her unseaworthiness, to which is due a loss of cargo, is not within the Limited Liability Act of June 26, 1884.

Concurrent findings of two lower courts accepted.

244 Fed. Rep. 95, affirmed.

THE case is stated in the opinion.

Mr. J. Parker Kirlin, with whom *Mr. George L. Canfield* was on the briefs, for petitioner.

Mr. Francis S. Laws, with whom *Mr. Sherwin A. Hill* was on the brief, for respondent.

MR. JUSTICE HOLMES delivered the opinion of the court.

This is a petition to limit liability for the loss of cargo on *The Benjamin Noble*, brought by the present petitioner after libels *in personam* had been filed in different districts by the cargo owners, the Cambria Steel Company. The right was denied by the District Court on the ground that the vessel was unseaworthy with the privity and knowledge of the owner when she sailed and that the owner had made a personal contract by which it warranted seaworthiness. 232 Fed. Rep. 382. The findings, rulings and decree of the District Court were affirmed by the Circuit Court of Appeals. 244 Fed. Rep. 95. 156 C. C. A. 523. Sub nom. *The Benjamin Noble*. A writ of certiorari was granted before *Luckenbach v. McCahan Sugar Refining Co.*, 248 U. S. 139, and *Pendleton v. Benner Line*, 246 U. S. 353, were decided but when they were before this Court. 245 U. S. 648. See 242 U. S. 638. 241 U. S. 677. The findings of fact are contested here, and because of some expressions it is suggested that the Circuit Court of Appeals is to be taken not to have made findings of its own upon the facts. On the contrary it appears to us to have reconsidered the evidence, giving to the findings below only the weight usually accorded to those of the tribunal that sees the witnesses and we see no sufficient reason for departing from the general rule where the two lower courts have concurred. 248 U. S. 139, 145.

We are urged to reconsider the question whether the limitation of liability is not made independent of the "privity or knowledge" of the owner by the omission of those words from the Act of June 26, 1884, c. 121, § 18, 23 Stat. 53, 57, coupled with the repeal, in § 30, of all laws and parts of laws in conflict with the provisions of that act. It is argued that the effect of the omission and the repealing section is to do away with the former qualification in Rev. Stats., § 4283, and the argument is fortified by a reference to the history of the act, which shows that some of the Senators thought it important to make the limitation absolute. On the other hand in *Butler v. Boston & Savannah S. S. Co.*, 130 U. S. 527, 553, 554, it was said by Mr. Justice Bradley that possibly the later act was intended to remove all doubt as to the application of the law to all cases of loss "caused without the privity or knowledge of the owner." We find no different expression in *O'Brien v. Miller*, 168 U. S. 287, 303. Mr. Justice Bradley's opinion was adopted after considerable discussion in *Richardson v. Harmon*, 222 U. S. 96, 106, and *Richardson v. Harmon* was accepted as establishing that the statute does not limit liability for the personal acts of the owners done with knowledge, in the late case of *Pendleton v. Benner Line*, 246 U. S. 353, 356. In that case the argument that the limitation of the exoneration to acts &c. done or incurred without the privity or knowledge of the owner was repealed by the Act of 1884, was presented in the fullest way.

We very much appreciate the danger that the act should be cut down from its intended effect by too easy a finding of privity or knowledge on the part of owners, as also by too liberal an attribution to them of contracts as personally theirs. We are not disposed to press the law in those directions further than the cases go. But in this case in addition to the finding of the owner's privity to the unseaworthiness was the further finding that the

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Syllabus.

contract was the personal contract of the petitioner—a finding that seems warranted if any contract by a corporation can fall within the class. That such contracts may impose a liability that cannot be transferred to what is left of the ship is decided. *Luckenbach v. McCahan Sugar Refining Co.*, 248 U. S. 139, 149. Upon the whole case we cannot escape from the conclusion that the decree must be affirmed.

Decree affirmed.
